

Page 234

1 another lawyer.

2 Q. You haven't done that in this case?

3 A. I don't -- I haven't personally done  
4 that, I don't believe. There may have been some  
5 conversation, but I didn't raise the question. I  
6 know we, for a variety of reasons, have Joe here  
7 and another law firm representing us, but...

8 Q. What other reasons?

9 MR. BURKE: Objection. Asked and  
10 answered.

11 A. I think maybe because you all filed some  
12 kind of motion with the court to prevent KMK from  
13 representing us -- that's in layman's terms --  
14 representing us directly, I would say, or something  
15 like that.

16 Q. Do you know if any KMK attorneys have  
17 been deposed in the case?

18 A. No, I don't know of any that have.

19 Q. Do you know if a trial date has been set  
20 in the case?

21 A. No.

22 Q. Do you know if any KMK attorneys have  
23 given testimony that's adverse or potentially  
24 adverse to some of KMK's clients?

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1 agreement or...

2 Q. Yes.

3 A. I don't know. I'm not sure exactly how  
4 to respond to that. I mean, if that's in the  
5 agreement, then I guess it is.

6 Q. And --

7 A. Probably kind of unusual, but...

8 Q. Do you know if there was any litigation  
9 instigated before the merger actually closed on  
10 December 3rd, 1999?

11 A. I don't know the answer to that.

12 Q. Well, let me represent to you that there  
13 was. Do you know if Mr. Burke represented  
14 Provident in that litigation?

15 A. No, I didn't -- I didn't know that there  
16 -- I don't remember that there was. I mean, back  
17 then I might have known there was some litigation  
18 instigated, but -- and I didn't know that Mr. Burke  
19 -- if there was something, if he was involved in  
20 it.

21 Q. Do you know if Mr. Burke made any  
22 statements that were false to the state court?

23 MR. BURKE: Objection. In addition to  
24 being an absolute lie, which is untrue, those

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1 MR. BURKE: Objection. Misstates the  
2 record; assumes facts not in evidence.

3 A. I have no recollection of any of that  
4 anyway.

5 Q. Do you believe that your interests are  
6 exactly aligned with Ken Hanauer's interests in  
7 this litigation?

8 MR. BURKE: Objection. Calls for legal  
9 conclusion.

10 A. I wouldn't be able to determine -- I  
11 don't know what Ken Hanauer's interests are,  
12 really. I mean, I think -- I don't know the answer  
13 to that.

14 Q. Do you know if Mr. Burke has been named  
15 as a witness or potential witness in the  
16 litigation?

17 A. I'm not certain that he has. It's  
18 possible, but I'm not certain.

19 Q. One of the conditions for the OHSL-  
20 Provident merger going through was that there be no  
21 injunction issued, correct?

22 A. One of the conditions when?

23 Q. In 1999.

24 A. This was a condition in the merger

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1 claims have already been dismissed from this  
2 case, Mr. Brautigam. They're no longer in the  
3 case. So continuing objection to this line of  
4 questioning. Misstates the record.

5 A. Obviously, I know Jim and I know that  
6 Jim doesn't lie, number one; but I'm not aware of  
7 any of those allegations.

8 Q. Have you ever known Mr. Burke to make a  
9 mistake?

10 A. I don't know that I have known him to  
11 make a mistake; but last time I checked, he was  
12 human, so I suspect he makes them.

13 Q. This is on page A-31 of the proxy  
14 materials, subheading c.

15 A. Okay. I see it.

16 Q. Standard language, correct?

17 A. I guess so. I mean, there's a lot of --  
18 you know, in part, as you know, there's a lot of  
19 legal language in here.

20 Q. And even though you may not remember as  
21 you sit here five years later, at the time if there  
22 was litigation before the merger trying to get an  
23 injunction, you would have been informed about  
24 that, correct?

60 (Pages 234 to 237)

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1 MR. BURKE: Objection. Calls for  
2 speculation; foundation.

3 A. I can't answer that really. I think  
4 that if somebody -- again, say it again so I can  
5 try to be focused on the response.

6 Q. As you sit here today in 2004, you may  
7 not remember if there was litigation initiated  
8 before the merger; but if that happened, as I'm  
9 representing to you it did happen, you would have  
10 been informed about that at the time, correct?

11 MR. BURKE: Objection. Calls for  
12 speculation.

13 A. I don't know whether I would have been  
14 informed or not. I really don't. I'm not saying I  
15 wouldn't have been informed.

16 There's, you know, a fair amount of  
17 litigation in the company. And if somebody deemed  
18 it was significant, I presume they would have  
19 informed me; but if they thought it wasn't  
20 significant, they would not have. I mean, it's  
21 kind of asking me to -- I don't remember what  
22 occurred. That would be the best way to answer the  
23 question.

24 Q. Do you know what it means to shop the

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1 correct?

2 MR. BURKE: Objection. Calls for  
3 speculation. This has already been asked and  
4 answered.

5 A. Well, this letter which we sent out to  
6 them which was sent out by Norbert Brinker says,  
7 Your board of directors unanimously approved the  
8 acquisition. So are you asking me to restate that?  
9 I mean, I think this went to their shareholders.

10 Q. Right. You agree with what I just read,  
11 correct?

12 MR. BURKE: He agrees with what his  
13 answer just was.

14 A. Yeah, I'm just -- I mean, this is what  
15 was sent out. So if you said that, then I agree  
16 with that.

17 Q. Okay. And the OHSL shareholders were  
18 told that the board of directors unanimously  
19 believed that the merger with Provident was in  
20 their best interest, correct?

21 MR. BURKE: Objection. Misstates the  
22 record; already asked and answered.

23 A. Yeah, that one, Mike, I'm just not sure  
24 what the intent was of the wording here, whether

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1 company?

2 A. I'm familiar with that general term.

3 Q. What does that mean?

4 A. That's when someone wants to sell their  
5 company, and they will typically go out and talk to  
6 some prospective buyers.

7 Q. How many prospective buyers of OHSL  
8 actually made a bid for the company?

9 A. I don't know. I have no idea what  
10 happened with them.

11 Q. Wasn't Provident the only bid?

12 A. I mean, we did a negotiated transaction  
13 with them, but I don't know whether they shopped it  
14 before, during, or after.

15 I mean, you know, not after the merger,  
16 but certainly the time period before we met with  
17 them; during we met with them; and even after the  
18 agreement was signed, that allowed the people to  
19 sometimes shop things; but I have no recollection  
20 whether they did that or not. You would have to  
21 ask their board.

22 Q. Do you agree that OHSL shareholders were  
23 told that their board of directors voted  
24 unanimously to approve the merger with Provident,

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1 unanimous related to approved or approved and  
2 believes.

3 I can't go back in time and figure out  
4 what somebody was thinking about when they wrote  
5 it. I'd say that I think it definitely relates to  
6 the approved. I'm not so sure whether it relates  
7 to the believes.

8 Q. And you agree that there was no  
9 indication in either the proxy nor the meeting of  
10 shareholders on October 25th, 1999, that  
11 Mr. Hanauer, OHSL CEO and board member and largest  
12 shareholder, had been opposed to the transaction  
13 from the beginning?

14 MR. BURKE: Objection. Misstates the  
15 record; calls for speculation; and assumes  
16 facts not in evidence.

17 A. I mean, I think what -- I don't know  
18 that Ken was opposed to it. So you're saying does  
19 the record have something in there that says he was  
20 opposed to it? My belief is that Ken was in favor  
21 of the transaction.

22 Q. Why would a comment (indicating) --

23 A. That is a newspaper article; and believe  
24 me, having worked with the media for 20 plus years,

61 (Pages 238 to 241)

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1 I don't really consider that because it's in print,  
2 it's accurate. I mean, boy, I hope people don't  
3 believe everything that's in the newspaper.

4 Q. Well, I worked for the New York Times,  
5 and they strived to be accurate.

6 A. Well, you can see what they have there.  
7 They have probably the biggest scandal in the  
8 newspaper business that's ever happened. I mean,  
9 they just fired their editor and about eight other  
10 people because they had the most inaccurate  
11 reporting for three years. That's a proved point.

12 Q. We can talk about that off the record,  
13 if you like. Do you have any idea how this  
14 statement attributed to Mr. Burke without quotation  
15 marks got in the Cincinnati Business Courier?

16 MR. BURKE: Objection.

17 A. I think that it got in there because it  
18 was wrong, and it happens with some regularity  
19 where people get misquoted. That's not, you know,  
20 the largest newspaper in town. What is it? The  
21 Courier?

22 Q. Yes?

23 A. Is that the weekly one?

24 Q. Yes.

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1 A. Yeah, I assume the statement's very  
2 incorrect from talking to Jim, and it's not that  
3 uncommon that there are incorrect statements in the  
4 press in my experience.

5 Q. Did you ever learn that Mr. Hanauer's  
6 signature had been on the first page of Defendants'  
7 Exhibit 1 and that he directed that it be removed  
8 because he didn't want the transaction to be seen  
9 as coming from him?

10 MR. BURKE: Objection. Misstates the  
11 record; assumes facts not in evidence; calls  
12 for speculation.

13 A. No. I can't recall that I knew that.

14 Q. Do you think that's potentially material  
15 information?

16 MR. BURKE: Objection.

17 A. I have no way to judge that.

18 Q. Do you know how long OHSL was a public  
19 company?

20 A. No.

21 Q. About six years? Does that sound right?

22 MR. BURKE: Objection. Calls for  
23 speculation.

24 A. I really -- I don't know.

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1 Q. Let me represent to you it was about six  
2 years, and my understanding is that this was the  
3 only shareholder communication of this sort that  
4 did not have the signature of the CEO and the  
5 chairman of the board. Does that strike you as  
6 being unusual in any way?

7 MR. BURKE: Objection. Calls for  
8 speculation; form.

9 A. I don't -- I can't say whether that  
10 would be unusual for, frankly, either this specific  
11 situation or a general situation.

12 Q. Do you believe that Mr. Hanauer's views  
13 on the merger, whatever they were, were material  
14 information?

15 MR. BURKE: Objection. Calls for  
16 speculation.

17 A. I think what's material about  
18 Mr. Hanauer's[sic] views is that he voted for it,  
19 and that's the most relevant bit of information.  
20 His own personal views, I really don't know what  
21 they are.

22 I've seen some different commentary on  
23 it, but I don't think it's -- I don't think I can  
24 really comment on whether it's material or not.

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1 That's more for Ken to comment on, I guess.

2 I hate -- I don't want -- I don't feel  
3 it's appropriate for me to comment on what people  
4 think Ken Hanauer's[sic] views may have been when  
5 he voted as a board member to approve the  
6 transaction. That would seem to tell me that his  
7 action was in favor of the transaction.

8 Q. Would you turn to paragraph 55 of the  
9 consolidated amended complaint, and would you read  
10 that to yourself -- it's found on pages 33 and 34  
11 -- please.

12 A. (Examining document.) Okay. I've read  
13 it.

14 Q. The question and answer that appears in  
15 the paragraph on page 34 is me asking Mr. Hanauer a  
16 question. Do you understand that?

17 A. Um-hum, I guess. I mean, that's what  
18 you're telling me.

19 Q. Yes. And does Mr. Hanauer's answer  
20 suggest that he was in favor of the transaction?

21 MR. BURKE: Objection. Calls for  
22 speculation.

23 A. Yeah, I don't -- I'm not sure that I can  
24 interpret what Ken was really thinking of, whether

62 (Pages 242 to 245)

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1 it's some personal preference for himself as a CEO  
2 or the transaction. I mean, it's really not for me  
3 to determine what Ken was thinking anyway, and this  
4 doesn't do it for me.

5 Q. Doesn't do what for you?

6 A. It doesn't convince me that Ken was not  
7 in favor of the transaction.

8 Q. Okay. So you believe, in spite of his  
9 answer here, Mr. Hanauer still may have been in  
10 favor of the transaction, correct?

11 MR. BURKE: Objection.

12 A. Well, I would say I believe Ken was in  
13 favor of the transaction.

14 Q. Okay. Why?

15 A. Because he voted for it as a board  
16 member.

17 Q. Aside from that, why do you believe  
18 Mr. Hanauer was in favor of the transaction?

19 MR. BURKE: Objection.

20 A. Beyond that, I can't tell you. I mean,  
21 I don't know what he was thinking. I mean, I can  
22 just go by what he did. He voted for the  
23 transaction, so that tells me he was in favor of  
24 it. If he wasn't in favor of it, he should have

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1 bottom of page 20?

2 A. Um-hum.

3 Q. Let me represent to you that that's my  
4 questioning Mark Weiss. You know who Mark Weiss  
5 is, correct?

6 A. Yes, I do.

7 Q. Do you know what, if any, role he had  
8 with respect to Defendants' Exhibit 1?

9 A. Well, Mark I think is more of an SEC  
10 counsel, but I might be wrong there, but I don't  
11 remember specifically what on this document -- but  
12 I've, over the years, had some conversations with  
13 Mark and worked with Mark on different things. I  
14 can't remember on this deal what his role was, but  
15 as I said earlier, I had more interaction with Tim  
16 Matthews.

17 Q. He's the second Q and A. But based on  
18 the Q and A that appears at the bottom of page 20,  
19 my questioning of Mark Weiss, is it fair to say  
20 that based on your previous answer, you agree with  
21 Mr. Weiss's concept that if Mr. Hanauer did not  
22 believe the merger was in the best interest of OHSL  
23 shareholders, he had a fiduciary duty to vote  
24 against it?

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1 not voted.

2 Q. Okay. If he was not in favor of it, why  
3 should he not have voted for it?

4 MR. BURKE: Objection to form; calls for  
5 speculation.

6 A. If you're not in favor of something, you  
7 don't vote for it. There's no -- I don't have a  
8 further explanation on that.

9 Q. Would you turn to page 20 of the CAC;  
10 and again, I'm interested in paragraph 30. It  
11 starts on page 19. You can read that to yourself  
12 for some background, and I'm going to have some  
13 questions about the two Q and A's that appear.

14 A. How far do you want me to read here?

15 Q. To the end of the paragraph, sir.

16 A. Before the Q and A, or including it?

17 Q. Including the Q and A.

18 MR. BURKE: Object to relevance to the  
19 extent this refers to claims that have been  
20 dismissed in this case.

21 A. (Examining document.) Okay. I've read  
22 it. I would have to re-refer to it because there's  
23 a lot of legalese here, but...

24 Q. Do you see the first Q and A at the

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1 MR. BURKE: Objection. Calls for  
2 speculation; assumes facts not in evidence;  
3 also calls for a legal conclusion.

4 A. So if Mr. Hanauer did not believe it was  
5 in the best interest of the shareholders, the  
6 question is should he have voted against it?

7 Q. Yes.

8 MR. BURKE: Objection. Calls for  
9 speculation; assumes facts not in evidence.  
10 You may answer.

11 A. Well, I mean, I don't disagree with that  
12 if he thought it wasn't in the best interest of the  
13 shareholders. He should vote what he thinks is in  
14 the best interest of the shareholder given all the  
15 variety of circumstances that could have been  
16 involved.

17 Q. Based on your understanding as someone  
18 who signs public documents, if Mr. Hanauer did not  
19 believe that the merger was in the best interest of  
20 the shareholders but he voted in favor of it  
21 anyway, and he allowed Defendants' Exhibit 1 to go  
22 out in that form, do you believe that Mr. Hanauer  
23 would have violated his fiduciary duties?

24 MR. BURKE: Objection. Calls for legal

63 (Pages 246 to 249)



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1 conclusion; calls for complete speculation  
2 based upon --

3 A. I don't know how the law would look at  
4 all that really. I can deal easier with the simple  
5 issue that he should vote what he thinks is the  
6 right thing for the shareholders. When you get  
7 past that, I think it's more of a legal question.

8 Q. Would you pick up Plaintiffs' Exhibit  
9 106, please.

10 A. Sure.

11 (Off-the-record discussion.)

12 BY MR. BRAUTIGAM:

13 Q. Based on the first page of Plaintiffs'  
14 Exhibit 106, is there anything that suggests to you  
15 that Mr. Hanauer's views are accurately reflected  
16 in Defendants' Exhibit 1?

17 MR. BURKE: Objection. Calls for  
18 speculation; calls for legal conclusion. This  
19 witness has no firsthand knowledge of any of  
20 this stuff.

21 A. I don't know how to comment on it  
22 because the guy voted for it, and this appears that  
23 he's backing off why he voted for it. But I would  
24 ask for a lot more context as to what it's supposed

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1 to mean.

2 It's hard for me to tell you what Ken is  
3 saying here after he's voted for it to go through.  
4 I mean, I just would say it's hard for me to really  
5 think about it.

6 Q. Why do you believe Mr. Hanauer voted in  
7 favor of the OHSL-Provident merger as a director?

8 MR. BURKE: Objection. Calls for  
9 speculation; no foundation.

10 A. I don't know why -- I can't say why he  
11 did.

12 Q. Okay. Do you dispute the reasons he  
13 gives on page 34, paragraph 55, of the consolidated  
14 amended complaint?

15 A. (Examining document.)

16 MR. BURKE: Objection. Calls for  
17 speculation; no foundation.

18 A. When you say that, where are you  
19 referring to?

20 Q. The Q and A towards the top of page 34?

21 A. The Q and A -- do I dispute that?

22 Q. Right.

23 MR. BURKE: Objection. Calls for  
24 speculation.

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1 A. Why did you change your vote from  
2 abstaining on July 22nd to in favor of August 2nd.  
3 And what do you want me to say about this again?

4 Q. Do you dispute Mr. Hanauer's reasons  
5 that he gives --

6 A. I'm not --

7 Q. -- reflected on page 34?

8 A. I am not in a position to affirm or  
9 dispute his reasons. It's written here. It says  
10 that. If that's what he said at this point in time  
11 well after the fact, then that's what he said.

12 Q. Do you believe that Mr. Hanauer was an  
13 honest man?

14 MR. BURKE: Objection.

15 A. I don't know Ken Hanover[sic] well  
16 enough. I assume he's an honest man, but it's not  
17 like I had some kind of business relationship with  
18 him.

19 Q. Mr. Carey, did I ask you earlier today  
20 how you expected Mr. Hanauer to have voted his  
21 personal shares?

22 MR. BURKE: Yes, in some length,  
23 Counsel.

24 A. I don't know if you did. You spent a

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1 lot of time on how you expected our board members  
2 to vote. I can't remember whether you asked about  
3 him voting.

4 Q. All right. Let me ask that. In 1999,  
5 did you have an expectation as to how Mr. Hanauer  
6 would vote his personal shares?

7 MR. BURKE: Objection.

8 A. No.

9 MR. BURKE: Calls for speculation.

10 A. I don't recall that I had any  
11 expectation on how any of their board members would  
12 have voted. It would have not been something that  
13 I would have expected would have been on my radar  
14 screen.

15 Q. Is that true in spite of the fact that  
16 the OHSL board of directors were recommending to  
17 the shareholders that they vote in favor of the  
18 merger?

19 MR. BURKE: Objection to form. Calls  
20 for speculation.

21 A. What I'm trying to say is that, as best  
22 I can recall for this and, frankly, any deal that I  
23 worked on, I didn't remember ever thinking about  
24 how are the board members going to vote their

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1 personal shares. They typically have some. They  
2 don't typically have a lot, but some have a lot.

3 But it's not something that I don't  
4 think would have been something I would have even  
5 been thinking about. The vote would have been more  
6 how are the shareholders going to vote, not six or  
7 seven people.

8 Q. Okay. Did you ever learn that OHSL was  
9 having trouble with the shareholder vote?

10 MR. BURKE: Objection. Misstates the  
11 record.

12 A. I don't think they did --

13 MR. BURKE: Assumes facts not in  
14 evidence.

15 A. -- and I would probably have to correct  
16 the record from earlier, because when I was talking  
17 about the Nat City vote, I think we only had about  
18 75 percent or so vote; and of those that voted, 99  
19 percent voted in favor.

20 And I guess I would ask you to correct  
21 this record because I think the way you asked the  
22 question got put in there wrong.

23 Apparently, only 52 percent voted  
24 because I don't even know if we used the proxy

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1 at least two-thirds of the shareholders vote; and  
2 then of those two-thirds, I believe you had to have  
3 50 percent voting in favor. I know you had to have  
4 two-thirds to vote. I think you just had to have a  
5 simple majority of those that voted.

6 Q. And what were the terms of the OHSL  
7 merger?

8 A. I don't remember.

9 Q. It was a simple majority, wasn't it?

10 A. I don't really remember. I mean, I  
11 don't remember it ever being an issue at the time  
12 whether we were going to get a vote. It's too long  
13 ago for me to remember something like that.

14 Q. Could you look at this sentence that's  
15 in bold and see if you want to correct your answer  
16 there about the Provident-National City deal?

17 A. Sure. (Examining document.) Yeah,  
18 that's what I said.

19 Q. Can I have that back?

20 A. Let me make sure I read this again. I  
21 wonder if that's worded right.

22 Q. It says two-thirds of the outstanding  
23 shares, correct?

24 A. Yeah.

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1 solicitation for that deal. We used a proxy  
2 solicitation for the Nat City deal to get more vote  
3 up, but apparently 85 percent or so voted for it.

4 Plus, I think there was an unusual  
5 difference in the way they do things. If you don't  
6 vote, it counts as a no vote or something. It was  
7 odd. It sounds like it was overwhelmingly voted in  
8 favor of it, and I'm not aware that we used a proxy  
9 solicitation. Maybe we did, but I don't remember  
10 it.

11 Q. So you're attempting to correct your  
12 testimony now --

13 A. Well, you said something that I think I  
14 responded to by not -- because I didn't understand  
15 your question. So I might have responded to it  
16 inaccurately, and I wanted to just kind of make  
17 sure that that didn't stay in the record like that.

18 Q. Okay. Well, let's --

19 A. I was responding to this thing here.

20 Q. Mr. Carey, what was the requirement for  
21 the National City-Provident merger to be approved?

22 MR. BURKE: Objection to form. You may  
23 answer.

24 A. The requirement was that you had to have

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1 Q. It doesn't say anything about two-thirds  
2 of those shares actually voting, correct?

3 A. Well, I know you have to get two-thirds  
4 of the shares to vote.

5 Q. For a quorum?

6 A. Yes, for a quorum.

7 Q. But, you need two-thirds of the actual  
8 shares outstanding with respect to the Provident --

9 A. Right.

10 Q. -- National City merger?

11 A. Two-thirds have to vote -- I don't think  
12 two-thirds have to vote in favor of it, but maybe  
13 they do. All I know is this, Mike, we got more  
14 than two-thirds voting, and that was a requirement.  
15 We had to have more than two-thirds of the  
16 shareholders voting, I believe.

17 Q. I want to clear this up.

18 A. Maybe I'm mistaken.

19 Q. On the first page of the document,  
20 Provident-National City proxy material, it says, as  
21 follows: In order for the merger agreement to be  
22 adopted, the holders of two-thirds of the  
23 outstanding shares of Provident entitled to vote  
24 thereon must vote in favor of the merger

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1 agreement. It says that, correct?

2 A. Yeah, that's what's written there, yeah.

3 Q. Now, in order for the OHSL-Provident  
4 merger to close, a simple majority was required,  
5 correct?

6 A. I don't remember.

7 Q. Let me represent to you that it was a  
8 simple majority.

9 A. I mean, it's in the bylaws. Whatever  
10 was in the bylaws. It's not something that gets  
11 decided during the merger.

12 Q. Now, you mentioned something about if a  
13 shareholder did not vote, i.e., did not return the  
14 proxy card, that it would be counted as a no vote  
15 and that that was odd. Is that your testimony?

16 A. Well, I should strike the word odd. It  
17 seemed odd to me. Whether it was really odd or  
18 not, I don't know, but...

19 Q. First of all, we're talking about the  
20 OHSL-Provident merger, correct?

21 A. Right.

22 Q. Why did that seem odd?

23 A. Well, it doesn't seem to make sense to  
24 me if you don't vote at all that counts as a no

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1 are keenly interested in the opinions of senior  
2 management, especially the most senior manager, the  
3 CEO?

4 MR. BURKE: Objection. Calls for  
5 speculation; no context; vague.

6 A. Yes, generally.

7 Q. In the context of mergers and  
8 acquisitions, do you believe that the CEO is  
9 generally viewed by shareholders as the person  
10 responsible for the day-to-day operations of the  
11 corporation as well as strategic planning for its  
12 future?

13 MR. BURKE: Objection. Calls for  
14 speculation; assumes facts not in evidence.

15 A. Yeah, I would say that. When you start  
16 getting into the little broader of what the  
17 investors think CEO's do, I would say there's a  
18 pretty wide range of what investors might think.  
19 Your mom and pop might not be thinking along those  
20 lines.

21 Q. Do you believe that, in the context of  
22 mergers and acquisitions, the CEO is also viewed by  
23 the investment community to be the most  
24 knowledgeable and informed about all matters

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1 vote.

2 Q. Okay. Well, what about the Provident-  
3 National City merger; if you didn't vote, how was  
4 your vote counted?

5 A. I don't recall.

6 Q. My representation is that if you didn't  
7 vote with respect to the National City merger, it  
8 counted as a no vote. Does it seem less odd?

9 MR. BURKE: Objection. Calls for  
10 speculation, and also there's no relevance to  
11 that.

12 A. I don't think that's right, but...

13 MR. BURKE: I don't think it is either.

14 Q. You don't think that's right? Okay.  
15 I'll find it in here.

16 A. Well, I know the vote in favor was 99  
17 and a half.

18 Q. Okay.

19 A. So I don't think that -- how do you get  
20 -- we only had 75 percent vote. So I don't think  
21 the other ones got counted as a no.

22 Q. Well, I'll find it.

23 A. Yeah, hey, I -- you know...

24 Q. Mr. Carey, do you believe that investors

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1 affecting the corporation and its future?

2 MR. BURKE: Objection. Calls for  
3 speculation.

4 A. That would be -- I wouldn't know how to  
5 judge that. There's so many varieties.

6 Q. Okay. In the context of mergers and  
7 acquisitions, do you believe that in conjunction  
8 with the chief financial officer, who reports on  
9 the financial matters of the corporation, the CEO  
10 is the most sought after voice in communications  
11 with shareholders in the investment community?

12 MR. BURKE: Objection. Vague; calls for  
13 speculation.

14 A. Yeah, I'll try to answer your question  
15 by saying that's -- there's a relatively large  
16 group of people on Wall Street that don't ever talk  
17 to CEOs or CFOs on purpose.

18 So it's hard for me to speculate how  
19 important they think what they say is when they  
20 manage hundreds of billions of dollars and  
21 purposely say, We don't talk to management.

22 So do some people think the CEO -- what  
23 the CEO and CFO do is important? Sure. Does  
24 everybody? I don't know. I know you can find

66 (Pages 258 to 261)

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1 people that manage billions and billions of dollars  
2 that purposefully go out of your way to tell you,  
3 We don't talk to those people.

4 Q. Well, even if these money managers don't  
5 talk to the CEO and the CFO, they still read what's  
6 said, correct?

7 MR. BURKE: Objection. Calls for  
8 speculation.

9 A. I don't know. A lot of the guys don't.  
10 They just run numbers. It's hard to generalize on  
11 some of that stuff, Mike, I'm telling you. You're  
12 going down a path that there's a lot of different  
13 things that are done out there by money managers  
14 who typically are the biggest shareholders.

15 Q. Do you believe that because OHSL was a  
16 regional savings and loan with six branches in  
17 western Cincinnati that, with respect to the OHSL-  
18 Provident merger, the role of the CEO as a source  
19 of information may have been even more important?

20 MR. BURKE: Objection. Calls for  
21 speculation.

22 A. I wouldn't -- more important relevant to  
23 what? I'm not... I don't know how to...

24 Q. Relative to other mergers and

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1 something about that, but I really can't recall  
2 whether I did or I didn't.

3 Q. In 1999, did you know that OHSL stock  
4 was not actively followed by securities analysts  
5 who might have expressed opinions about the merger?

6 A. I don't remember whether I knew that or  
7 not. With the size of the company, it wouldn't  
8 surprise me that they weren't.

9 Q. Do you agree that Mr. Hanauer was a  
10 visible member of the community?

11 MR. BURKE: Objection. Calls for  
12 speculation.

13 A. Yeah, I don't know what you're defining  
14 as community there. I don't think he was a visible  
15 member of the Cincinnati at-large community; but of  
16 some smaller community, he could have been. I  
17 don't know.

18 Q. Okay. Did you know that Mr. Hanauer had  
19 come up through the ranks and been affiliated with  
20 the bank for more than 20 years?

21 MR. BURKE: Objection. Calls for  
22 speculation.

23 A. I don't remember whether I knew that or  
24 not. I may have.

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1 acquisitions.

2 MR. BURKE: Objection to form; calls for  
3 speculation.

4 A. I don't know how I would make a judgment  
5 whether they're relevant to others or would be more  
6 or less important because of their size. I'm not  
7 sure it would matter.

8 Q. Did you know that many of the OHSL  
9 shareholders were also customers and/or employees  
10 of OHSL?

11 A. I know that some are. I don't know if I  
12 could use the word many, but I know that certainly  
13 the employees had shares, and I know that some of  
14 the customers had shares. I wouldn't have known  
15 the magnitude of it, but...

16 Q. Did you know that OHSL shares did not  
17 turn over quickly relative to the total number of  
18 shares outstanding suggesting that many of its  
19 investors were committed long term owners of the  
20 stock?

21 MR. BURKE: Objection. Calls for  
22 speculation.

23 A. That would have not been something I  
24 would have -- I can't recall. I might have known

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1 Q. Did you know that Mr. Hanauer was the  
2 only representative of management serving as an  
3 OHSL board member?

4 MR. BURKE: Objection. Speculation.

5 A. I can't remember, but I probably would  
6 have -- I mean, as I remember -- as best as I  
7 remember, I think he was the only manager on the  
8 board. I don't think the CFO was on the board.

9 Q. And based on these factors that we've  
10 just discussed right now, do you believe that his  
11 opinion regarding the merger of Provident would  
12 have been important to OHSL shareholders in the  
13 sense that it would have added to the total mix of  
14 information available to them in making their  
15 judgment decisions?

16 MR. BURKE: Objection. Calls for  
17 complete speculation. He said he didn't know  
18 most of those factors; and also calls for  
19 legal conclusion.

20 A. Yeah, I can't say whether his opinion  
21 would or not. I don't know what kind of  
22 relationship they had with -- he had with his  
23 shareholders.

24 Q. You testified earlier, if I understood

67 (Pages 262 to 265)



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1 your testimony correctly, that you believe  
2 Mr. Hanauer was a small shareholder; is that right?

3 A. You know, I don't remember exactly how  
4 many shares he had. It didn't strike me that he  
5 was a controlled shareholder. That's what I meant  
6 by that.

7 Q. What do you mean by controlled  
8 shareholder?

9 A. 20 percent and above.

10 Q. Okay. Would you turn to page 63 of the  
11 proxy materials. Mr. Hanauer owned 123,075 OHSL  
12 shares as of July 31st, 1999, correct?

13 A. That's what it says in here, so I assume  
14 it's correct.

15 Q. And that equated to owning 4.9 percent  
16 of the company, correct?

17 A. Um-hum.

18 Q. And he was certainly the largest  
19 shareholder by far, correct?

20 MR. BURKE: Objection. Calls for  
21 speculation.

22 A. Yeah, I would say with what's listed on  
23 here, he's clearly the largest shareholder.

24 Q. And the next largest shareholder is the

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1 individual board members have even 1 percent of a  
2 company. Most of these guys have more than 1  
3 percent.

4 From a percentage standpoint, that would  
5 be above average; maybe not for this size company,  
6 but for -- if you compare it to the average  
7 company. I just remember him not having a huge  
8 financial stake in it, you know, and it doesn't  
9 look like he has.

10 Q. This was almost 3 million dollars,  
11 correct?

12 A. Right.

13 Q. Do you agree that Mr. Hanauer held the  
14 most important role in the company with respect to  
15 the shareholders?

16 MR. BURKE: Objection. Calls for  
17 speculation.

18 A. I would expect that the board -- in the  
19 company?

20 Q. Yes.

21 A. As an operating person? Sure, the CEO  
22 is the number one job. I don't know how they  
23 viewed it, but -- because I don't know their  
24 shareholders. I mean, typically -- I would be

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1 CFO, who owns less than half the company, correct?

2 MR. BURKE: Are you saying the  
3 shareholder of all or among the management --

4 Q. The next largest shareholder on page 63.  
5 (Off-the-record interruption.)

6 (The question was read back.)

7 MR. BURKE: Do you understand the  
8 question?

9 A. I mean, I agree with the numbers that  
10 are on here. I think they're probably right.

11 Q. Okay.

12 A. I think partly when I was thinking about  
13 whether Ken was a big shareholder or not was more  
14 the value of the stake than the percentage of the  
15 stake. I think correctly I remember he was not a  
16 control shareholder. You wouldn't be a control  
17 shareholder at 4.9 percent.

18 Q. Well, the entire board representation  
19 had under 20 percent, right?

20 A. Um-hum. That's a good representation  
21 for a typical board. I would say that's above  
22 average.

23 Q. Why?

24 A. You don't see too many boards where

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1 speculating if I say how they really viewed it. It  
2 is a smaller company here.

3 Q. And obviously, Mr. Hanauer held the top  
4 spot in terms of share ownership, correct?

5 MR. BURKE: Objection. Among the board  
6 members or overall?

7 MR. BRAUTIGAM: Overall.

8 MR. BURKE: Calls for speculation.

9 A. I don't know. I mean, I forget the  
10 rules now, but if you had someone that had probably  
11 over 5 percent, it would probably have to be  
12 disclosed. I don't see it being disclosed, so I  
13 would assume he's the largest individual  
14 shareholder, but I don't know.

15 If you have a total unaffiliated with a  
16 larger -- you could have someone with larger shares  
17 here -- with a larger -- I would have to check with  
18 SEC counsel to see whether that was true or not, or  
19 if it's disclosed somewhere else in the document.  
20 I don't know the answer to that. I suspect he  
21 probably did, but I don't know.

22 Q. Do you agree with this statement -- this  
23 is a statement made by our expert witness -- It is  
24 my opinion, meaning the opinion of the expert, that

68 (Pages 266 to 269)

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1 if shareholders had known that a person on the  
2 board with the largest financial stake in the  
3 company and most able to impact vote by virtue of  
4 share ownership did not believe the merger was in  
5 the best interest of OHSL shareholders, the outcome  
6 of the shareholder vote would most likely be  
7 different?

8 MR. BURKE: Objection. Speculation.

9 A. I could no way speculate on that.

10 Q. You can't agree or disagree?

11 MR. BURKE: Objection. Calls for  
12 speculation.

13 A. I couldn't possibly determine whether  
14 that was true. What if the shareholders all  
15 thought this guy was a nut and just wanted to keep  
16 his job, and they all knew that? They might not  
17 care how he voted.

18 It's very typical for CEOs to want to  
19 stay and run the company and be king. So I don't  
20 know. I don't know how they would have viewed it.  
21 I don't know the circumstances of how the  
22 shareholders viewed him or the board.

23 Q. Do you believe that a fair reading of  
24 the proxy materials would have caused a reader to

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1 it. It would be interesting. I don't know how  
2 much weight they put on it. Every situation is  
3 unique.

4 Q. But it would add to the total mix of  
5 information that a reasonable shareholder would  
6 want to consider, right?

7 MR. BURKE: Objection. Calls for  
8 speculation; calls for a legal conclusion.

9 A. It might; it might not. I don't know.

10 Q. Mr. Carey, I've put before you some  
11 quotes, various documents that suggest to me that  
12 Mr. Hanauer did not believe the merger was in the  
13 best interest of OHSL shareholders, and he wasn't  
14 in favor of the transaction. You're not convinced  
15 by the documents that I've shown you, correct?

16 MR. BURKE: Objection. Calls for  
17 speculation. You may answer.

18 A. I don't know -- I'm not sure what to  
19 believe. I mean, I've seen what you've provided,  
20 and we've talked through all this stuff today. The  
21 guy voted for the deal.

22 My best guess is that he wanted to keep  
23 it as an independent company so he could be CEO,  
24 but he felt this was the right transaction for the

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1 believe that Mr. Hanauer intended to vote his  
2 shares in favor of the merger?

3 MR. BURKE: Objection. Calls for  
4 speculation.

5 A. Yeah, I don't -- I really can't tell you  
6 how I think other people would have assumed. I  
7 would only tell you I don't know that most other  
8 people would have even thought about that. How he  
9 was going to vote his shares is not the kind of  
10 thing that typically comes up.

11 I think people would have looked at this  
12 and said these guys voted for the deal. I've got  
13 all this information. I'll make my decision. I  
14 don't think the average shareholder thinks about  
15 who's going to vote what that's on the board.

16 Q. Do you believe that the average  
17 shareholder is interested in the opinions of the  
18 person who wears the hat of the largest  
19 shareholder, the only member of management on the  
20 board, and the CEO of the company?

21 MR. BURKE: Objection. Asked and  
22 answered. Calls for speculation.

23 A. I don't -- I can't even talk about their  
24 average shareholder. I'm not that familiar with

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1 company, so he voted his shares but would have  
2 preferred to stay independent. That's what a lot  
3 of people want to do.

4 I mean, I'm not -- I'm not sure. I  
5 don't know what was really going through the guy's  
6 mind. I've seen the different documents and  
7 statements from him, but I can't read Ken Hanauer's  
8 mind as to why he was -- why he did what he did.

9 Q. Okay. And I don't believe any of my  
10 questions have asked you to read Ken Hanauer's  
11 mind, so I just want that to be clear.

12 By the way, with respect to the  
13 Provident-National City merger, I found that  
14 section that I was looking at. Would you just take  
15 a look at what I've highlighted on page 2.

16 A. (Examining document.) Um-hum. I read  
17 it.

18 Q. So if a Provident shareholder did not  
19 vote on the National City merger, that would be  
20 counted as a no vote, correct?

21 A. I don't know. I'm still not sure.

22 Q. Okay. You're not sure, but let me just  
23 read this sentence into the record. This is the  
24 sentence I've directed your attention to.

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1 A. I gotcha.  
 2 Q. Therefore, if you do not vote or abstain  
 3 from voting, your failure to vote or your  
 4 abstention will count the same as a vote against  
 5 approving the merger and the related transactions.  
 6 A. I think that's an ineffective  
 7 interpretation of the way it really works, but it's  
 8 different than how one would think about it.  
 9 Q. Isn't that exactly the same way that the  
 10 OHSL transaction worked?  
 11 A. I don't remember, but maybe -- it maybe  
 12 gets you to the same place.  
 13 Q. Let's take a look at page 18 of --  
 14 MR. BURKE: Can we take a five-minute  
 15 break?  
 16 MR. BRAUTIGAM: Sure.  
 17 (A brief break was taken from 2:45 to  
 18 2:52, 7 minutes.)  
 19 BY MR. BRAUTIGAM:  
 20 Q. Would you pick up Exhibit 74 and turn to  
 21 page 11, please.  
 22 A. Okay.  
 23 Q. Were you aware that a vote of 63,000  
 24 shares would have stopped the OHSL merger from

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1 2,503,470, correct?  
 2 MR. BURKE: Objection. The document  
 3 speaks for itself. It is what it is.  
 4 Mr. Carey cannot sign off on your expert's  
 5 opinion, Mike. I guess I don't understand  
 6 this line of questioning.  
 7 Q. Okay. On page 12, do you dispute any of  
 8 the math?  
 9 MR. BURKE: Objection. Relevance.  
 10 A. I don't have a calculator with me.  
 11 Q. I've addressed that. (Handing witness  
 12 calculator.) Now you do.  
 13 A. Do you want me to calculate the math?  
 14 Is that it?  
 15 Q. You can if you want. I'm simply asking  
 16 if you dispute any --  
 17 A. I don't affirm it and I don't dispute  
 18 it. I'm not here to affirm the math in this  
 19 calculation, am I?  
 20 Q. You're here to answer my question.  
 21 That's a fair question.  
 22 MR. BURKE: I think he answered your  
 23 question.  
 24 Q. Okay. Do you agree that the dissension

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1 going forward?  
 2 MR. BURKE: Objection. Calls for  
 3 speculation; assumes facts not in evidence.  
 4 You may answer. What is the number on this,  
 5 Mike?  
 6 MR. BRAUTIGAM: 74. If you don't have  
 7 it, I can make you a quick copy if you like.  
 8 MR. BURKE: I'll just look off of his.  
 9 A. I wasn't aware of it.  
 10 Q. Okay. Let me represent to you that my  
 11 client, Walter Thiemann voted 40,000 shares in  
 12 favor of the merger, but he's testified that he  
 13 would have changed his vote had he known the true  
 14 facts. So if you do the math, that leaves 23,000  
 15 shares, correct?  
 16 MR. BURKE: Objection. Calls for  
 17 speculation as to Mr. Thiemann and also  
 18 misstates the record.  
 19 A. Yeah, I don't know. I mean, you've got  
 20 some numbers here. I don't know how accurate any  
 21 of them are. I mean, how would I know that other  
 22 than you just saying that it is.  
 23 Q. Okay. Well, you can check in the proxy  
 24 materials that OHSL shares outstanding were

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1 by board members in a merger or acquisition is  
 2 perceived as being detrimental to the completion of  
 3 the transaction?  
 4 MR. BURKE: Objection. Calls for  
 5 speculation; vague; no context.  
 6 A. I mean, I don't think I could comment on  
 7 a general commentary like that. It could be or it  
 8 could not be. It would depend upon the  
 9 circumstances.  
 10 Q. In the circumstances of this particular  
 11 merger, do you believe if there was any dissension  
 12 by any board member for any reason --  
 13 A. I have no idea, Mike, whether that would  
 14 have been an issue or not.  
 15 Q. An issue for whom?  
 16 A. To complete the merger.  
 17 Q. Would it be detrimental to the  
 18 completion of the transaction?  
 19 MR. BURKE: Objection.  
 20 A. I don't know. I don't know if it would  
 21 or wouldn't. I don't know how I could determine  
 22 that now after the fact.  
 23 Q. Would it assist the completion of the  
 24 merger?

70 (Pages 274 to 277)

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1 MR. BURKE: Objection. Calls for  
2 speculation.

3 A. I think I tried to answer that. I don't  
4 know whether in this circumstance, with what was  
5 going on with this company, whether -- what the  
6 impact would have been of that kind of dissension.

7 Q. Okay.

8 A. I could only speculate. I don't think  
9 that's really helpful for me to guess what it might  
10 have done.

11 Q. Okay. Under what circumstances would  
12 dissension by any OHSL board member have assisted  
13 in the effectuation of the merger?

14 MR. BURKE: Read that question back,  
15 please.

16 (The question was read back.)

17 MR. BURKE: Objection. Calls for  
18 speculation.

19 A. Yeah, I don't -- I don't know of a  
20 specific circumstance where it would help or hurt.  
21 I don't really think it's appropriate for me to try  
22 to speculate on what that would do. I think there  
23 are cases where it could help or hurt.

24 Q. Mr. Carey, I want to make absolutely

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1 more members of OHSL's board would have added to  
2 the total mix of information that a reasonable  
3 shareholder would want to consider?

4 MR. BURKE: Objection. Speculation;  
5 calls for legal conclusion?

6 A. I don't know what a reasonable  
7 shareholder would have considered important for  
8 that.

9 Q. Do you agree with our expert's  
10 conclusion that Mr. Herron's resignation was  
11 material information?

12 MR. BURKE: Objection. Calls for  
13 speculation; legal conclusion.

14 A. I wouldn't be able to comment on that.  
15 Your expert has apparently done a lot of work that  
16 I haven't done on it. I'm not sure -- you know,  
17 there's more of a legal question, I think, anyway.

18 Q. Well, it's a simple concept. You have a  
19 director; he's not in favor of the transaction; he  
20 resigns in part in protest.

21 MR. BURKE: Objection.

22 Q. Do you believe that's material  
23 information?

24 MR. BURKE: Misstates the record; calls

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1 sure I have this straight.

2 A. Okay.

3 Q. It's your testimony as Provident's CFO  
4 under oath that you believe there are some  
5 circumstances where dissension by board members of  
6 the company to be acquired could help effectuate  
7 the merger; is that right?

8 MR. BURKE: Objection. Asked and  
9 answered.

10 A. Well, I'll revise it a little bit just  
11 to get it clear. I think there are circumstances  
12 where dissension by a board member in a transaction  
13 would not prevent and/or impact a merger from  
14 getting completed. I'm not sure that dissension  
15 would help get completed. So if that's what I  
16 said, I was probably speaking too quickly.

17 Q. There's a difference between preventing  
18 the merger from being effectuated and impacting the  
19 merger, correct?

20 MR. BURKE: Objection. Vague;  
21 speculation; no context.

22 A. There's a difference between the word  
23 prevent and impact, yes.

24 Q. Do you believe that dissent by one or

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1 for speculation; asked and answered.

2 A. I would say, as I said earlier when you  
3 asked that question, I don't know what factors one  
4 would determine -- should look at and determine  
5 relative that type of thing happening and whether  
6 that would be material or not.

7 So I would consult with legal counsel  
8 about whether they thought that was important or  
9 not. It's not a normal situation, I don't think,  
10 but there must be some precedent for it.

11 Q. The resignation of a director?

12 MR. BURKE: Objection to form.

13 A. In the midst of a transaction.

14 Q. Okay. Glad you asked that. Glad you  
15 suggested that. Are you an HP shareholder, by  
16 chance?

17 A. Hewlett Packard?

18 Q. Yes.

19 A. I have to think about that for a  
20 second. I don't think I am, but I'm familiar with  
21 the company.

22 Q. Were you in 2001 and 2002?

23 A. I don't think so.

24 Q. You testified that you read the Wall

71 (Pages 278 to 281)



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1 Street Journal for a number of years, so you're  
 2 familiar with the HP/Compaq merger, correct?  
 3 A. Yes.  
 4 Q. And you know who Walter Hewlett is,  
 5 correct?  
 6 A. Yes.  
 7 Q. And you know that Mr. Hewlett served on  
 8 Hewlett Packard's board in 2001, correct?  
 9 A. Um-hum.  
 10 Q. And you know that Mr. Hewlett, after  
 11 voting in favor of the merger with Compaq, resigned  
 12 in protest of the merger, correct?  
 13 MR. BURKE: Objection. Calls for  
 14 speculation. You may answer.  
 15 A. Yes, I do know that he resigned. I know  
 16 that he resigned. I don't think -- and he was not  
 17 in favor of the transaction.  
 18 Q. Okay. After he resigned, Mr. Hewlett  
 19 actively opposed the transaction, correct?  
 20 A. That's correct.  
 21 Q. Did that have an effect on the market?  
 22 I'm not asking if it changed the outcome, but did  
 23 it have an effect on how the merger was perceived  
 24 in the market?

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1 A. I have no idea.  
 2 MR. BURKE: Objection. Calls for  
 3 speculation.  
 4 A. I couldn't answer that question.  
 5 Q. What factors would you need to know in  
 6 answering that question?  
 7 A. I don't know how you make that judgment.  
 8 That's probably beyond my scope of expertise.  
 9 Q. Okay. Would you take a look at --  
 10 A. He was ineffective as you -- you're not  
 11 asking about, but he did not succeed in his quest;  
 12 and the jury is now saying that it was a good  
 13 transaction.  
 14 Q. The market is saying that?  
 15 A. Right.  
 16 Q. But whether he succeeded or not,  
 17 Mr. Hewlett's views were certainly disclosed to the  
 18 investing public, correct?  
 19 MR. BURKE: Objection.  
 20 A. He disclosed them.  
 21 Q. And he had a lot of money to bank roll  
 22 the (inaudible) of his views, correct?  
 23 A. I wouldn't want to speculate on how much  
 24 money he had. I think he was a big shareholder,

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1 bigger than anyone on this board.  
 2 Q. I'm not sure in terms of percentage, but  
 3 certainly in terms of dollar amount.  
 4 A. Might have been. The foundation was  
 5 pretty big.  
 6 Q. Okay. Could you read paragraph 31 to  
 7 yourself, please.  
 8 A. (Examining document.) Okay. I read it.  
 9 Q. You testified in your previous answer  
 10 that you weren't sure how to evaluate Mr. Hewlett's  
 11 position. Does a 17 percent increase in the price  
 12 of HWP shares coupled with dramatically increased  
 13 trading volume suggest that Mr. Hewlett's views had  
 14 some effect on the market?  
 15 MR. BURKE: Objection. Calls for  
 16 speculation.  
 17 A. There's so much speculation that I'd  
 18 have to do on a deal this complex. I think it's  
 19 really totally an inappropriate question. I  
 20 couldn't possibly comment on it. I don't know what  
 21 happened to price movements before and after the  
 22 original deal was announced.  
 23 I'm not capable to really comment on the  
 24 Hewlett Packard deal. I've read about it

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1 extensively; but even with that acknowledgment that  
 2 I read about it extensively, I wouldn't be able to  
 3 comment on that having any relationship to what  
 4 went on at Provident and OHLC.  
 5 Q. OHSL?  
 6 A. OHSL. It's getting late in the day.  
 7 Q. Mr. Carey, this is a relatively simple  
 8 concept though, isn't it? Mr. Hewlett is a  
 9 director; he votes in favor of the merger as a  
 10 director; changes his mind; resigns; and announces  
 11 his active opposition to the merger; correct?  
 12 That's what we have before us, right?  
 13 MR. BURKE: Objection.  
 14 A. I don't think it's a very -- I don't  
 15 think it's a valid comparison. This is a company  
 16 buying a PC maker, effectively, in a business that  
 17 a lot of people thought was a terrible business.  
 18 They're not analogous at all, these two  
 19 transactions.  
 20 Q. What about the concepts of the  
 21 director's impact on a proposed merger --  
 22 A. I don't think they're analogous --  
 23 MR. BURKE: Objection.  
 24 A. -- because I think the transactions are

72 (Pages 282 to 285)

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1 so dissimilar.

2 Q. Because of the nature of the industries?

3 A. People didn't like the PC industry, so  
4 that's why they were uncertain about it. You know,  
5 I don't think they're analogous at all.

6 I can't try to make any kind of  
7 comparison between the two, because I think that if  
8 you were comparing two bank deals, maybe there  
9 would be some reason -- it would still be me  
10 speculating -- but using Hewlett Packard as a  
11 comparison I find to be extraordinary that someone  
12 would introduce that as some relevant fact to our  
13 deal, extraordinary that you could get someone to  
14 do that.

15 Q. Do you think Disney would be a better  
16 example?

17 A. No, I don't think Disney would be a good  
18 example either.

19 Q. I'll tell that to Mr. Cook when he gets  
20 back. I think he suggested that.

21 A. Yeah, well, I don't think Disney's a  
22 very good one.

23 Q. Do you believe that Mr. Hewlett's voice  
24 against the transaction was perceived as a credible

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1 by board members means without knowing what it's  
2 about. Just dissension in itself could be for  
3 reasons that might not create uncertainty in the  
4 deal. Who knows? It could be for a lot of  
5 different things.

6 Q. How about a director resigning in part  
7 in protest?

8 MR. BURKE: Objection. Speculation;  
9 assumes facts not in evidence.

10 A. I have no idea why the guy resigned.

11 Q. Would you pick up document 106, please.

12 A. Um-hum.

13 Q. Would you turn to the second attachment.  
14 It's the affidavit of Thomas M. Herron, and would  
15 you read that to yourself, please.

16 A. Is there a page number on that?

17 Q. It's page number 1.

18 A. This one here (indicating)?

19 Q. Yeah. If you go back three pages, that  
20 will be it.

21 A. Do you want me to read this whole thing?

22 Q. Why don't you read --

23 MR. BURKE: Obviously, Counsel, this is  
24 objectionable because you're not giving him

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1 threat to the transaction?

2 MR. BURKE: Objection. Calls for  
3 speculation.

4 A. I don't -- I really don't know whether  
5 it was or not.

6 Q. Okay. Do you agree with the statement  
7 that the disclosure of opinions and actions of  
8 board members is an important source of information  
9 to investors?

10 MR. BURKE: Objection. Calls for  
11 speculation; no foundation.

12 A. Yeah, I don't agree or disagree with  
13 that statement. I couldn't possibly. It would  
14 depend on what they had to say, frankly; but I  
15 still -- you know, I can't make a judgment on just  
16 the statement of whether they -- their particular  
17 viewpoints.

18 Q. Do you agree that dissension by board  
19 members in a merger situation signals uncertainty  
20 and can affect the ultimate outcome of the  
21 shareholder vote?

22 MR. BURKE: Objection. Speculation; no  
23 foundation.

24 A. I can't comment on what the dissension

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1 the full story.

2 Q. Why don't you read paragraph 4.

3 A. Okay. So he resigned in part because he  
4 opposed the OHSL merger?

5 Q. Right.

6 MR. BURKE: Object. That is what is  
7 being represented to you. I object to that  
8 because that's an incomplete and inaccurate  
9 representation, as Mr. Brautigam knows.

10 Q. Mr. Carey, this is an affidavit,  
11 correct?

12 MR. BURKE: Objection. Calls for  
13 speculation.

14 A. This is a copy of a paper that you've  
15 given me. Whether it's an affidavit, I have no  
16 idea.

17 Q. Does it say affidavit?

18 A. It does say affidavit.

19 Q. On the fourth page of the document, does  
20 it appear to have Mr. Herron's signature?

21 A. It appears to. I have no idea that's  
22 his signature. It's certainly signed by somebody.

23 Q. Does it appear to have a notary stamp as  
24 well?

73 (Pages 286 to 289)

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1 A. It has a notary stamp.  
 2 Q. Is this consistent with your  
 3 understanding of what an affidavit is?  
 4 MR. BURKE: Objection. Calls for legal  
 5 conclusion.  
 6 A. I would refer that to legal counsel  
 7 whether this is. I'm not going to say it isn't,  
 8 you know. I don't have any idea whether it's an  
 9 affidavit.  
 10 Q. Okay. Now, you testified a moment ago  
 11 you didn't have any idea why Mr. Herron resigned,  
 12 right?  
 13 A. Right.  
 14 Q. Do you now have an idea why Mr. Herron  
 15 resigned?  
 16 MR. BURKE: Objection. Calls for  
 17 speculation; and this is, as you know,  
 18 inaccurate and incomplete, Mr. Brautigam, and  
 19 I object on that basis.  
 20 MR. BRAUTIGAM: I don't need speaking  
 21 objections, and I don't agree it's inaccurate  
 22 or incomplete.  
 23 MR. BURKE: Would you prefer to give to  
 24 the witness the entire record with respect to

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1 independent.  
 2 Q. You may or may not agree, but that's a  
 3 legitimate position for --  
 4 A. The market doesn't agree with that.  
 5 Q. -- a director to have, correct?  
 6 A. So I would say that, you know...  
 7 Q. What do you --  
 8 A. But again, I don't know. All I can  
 9 say -- what's your question for me? I'm not  
 10 refuting anything you have written here. I'm not  
 11 trying to bicker with you here, but this says that  
 12 he was opposed to the merger, and I -- I mean,  
 13 fine. Do I think that is material information?  
 14 MR. BURKE: Objection.  
 15 A. I have no idea. I mean, I'm not going  
 16 to comment. I don't know whether it is or it  
 17 isn't. I don't dispute that's what this document  
 18 says, and it looks like an affidavit.  
 19 Apparently, he also has some other  
 20 thoughts that Jim has mentioned, but I'm not  
 21 disputing that this document says that. What I am  
 22 saying is I don't feel that if this were true, that  
 23 that is something that would change the opinion of  
 24 the investors.

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1 his resignation to be fair, or not? Obviously  
 2 not.  
 3 MR. BRAUTIGAM: Jim, when I'm done, you  
 4 can make whatever representations and ask  
 5 whatever questions you'd like.  
 6 MR. BURKE: Objection. Calls for  
 7 speculation; no firsthand knowledge of this.  
 8 A. The only thing I would say is the  
 9 statement before here reads -- it says he resigned  
 10 in part because he opposed the merger.  
 11 Q. Do you believe --  
 12 A. That's what this statement says.  
 13 Q. Right. And do you believe that that's  
 14 material or potentially material information?  
 15 A. I have no idea what -- no, I don't  
 16 believe that it is or it isn't.  
 17 Q. Okay. What's the --  
 18 A. I have no idea why he opposed it if he,  
 19 in fact, did. What if he opposed it for all the  
 20 wrong reasons?  
 21 Q. Well, finish paragraph 4. What does it  
 22 say?  
 23 A. I believe that the best business  
 24 (inaudible) for OHSL at the time was to remain

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1 Q. Is it something that the investors would  
 2 want to consider?  
 3 MR. BURKE: Objection.  
 4 A. I don't know.  
 5 MR. BURKE: Calls for speculation.  
 6 A. I'm really not sure, as I said earlier,  
 7 if you have someone that resigns for some reasons,  
 8 some of which obviously relate to the merger,  
 9 whether that's factual information that should be  
 10 given to investors prior to a vote. I'm not sure  
 11 what the answer is to that.  
 12 Q. When did Mr. Herron's resignation become  
 13 effective?  
 14 MR. BURKE: Objection. Speculation; no  
 15 foundation.  
 16 A. I don't know personally. This document  
 17 says effective July 30th.  
 18 Q. Right. And how many days before the  
 19 final OHSL-Provident merger was signed by you is  
 20 July 30th?  
 21 A. When was it signed by me? August 3rd?  
 22 Is that what it was? August 2nd?  
 23 Q. 2nd.  
 24 A. A few days before.

74 (Pages 290 to 293)

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1 Q. Okay. Would you turn to page 63 of the  
2 proxy materials again. Mr. Herron's name does not  
3 appear in that table, does it?

4 A. It doesn't look like it appears.

5 Q. What's the date of that table?

6 MR. BURKE: Let the witness read it so  
7 he can see what it is.

8 A. It says July 31st.

9 Q. And that's one day after Mr. Herron's  
10 resignation became effective, correct?

11 A. Um-hum.

12 Q. Who picked the date July 31st, 1999, for  
13 that table?

14 A. No idea.

15 Q. Does it appear to you that the table is  
16 misleading in that context?

17 MR. BURKE: Objection.

18 A. No, it doesn't appear to me. I mean, I  
19 don't know what the SEC rules are on what you  
20 should put in here. I don't think I picked the  
21 date, but I don't know what the reason was for  
22 picking the date. These dates are probably  
23 typically picked on month end. Maybe they're not.

24 Q. Are they typically picked the day after

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1 What's the relevance?

2 Q. What are the terms of your golden  
3 parachute?

4 MR. BURKE: What's the relevance?

5 A. Why is that relevant to this deposition?

6 MR. BURKE: I mean, this has nothing to  
7 do with the Thiemann case, as you know. I'm  
8 giving you great latitude in going into  
9 National City. Why does that matter?

10 Q. Mr. Carey, are you going to answer my  
11 question?

12 MR. BURKE: We're going to ask you why  
13 it's relevant, Mr. Brautigam.

14 MR. BRAUTIGAM: I'm not justifying every  
15 individual question. I'm asking a question, I  
16 believe it's relevant, and that's it.

17 MR. BURKE: Then we'd like to try to  
18 address this with the magistrate at our  
19 conference that's coming up to see whether or  
20 not this is relevant.

21 MR. BRAUTIGAM: Are you directing him  
22 not to answer?

23 MR. BURKE: Until we have an opportunity  
24 to speak to the magistrate, yes.

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1 a director resigns?

2 MR. BURKE: Objection. Speculation.

3 A. I don't really know when they're  
4 typically picked, frankly. Usually, I think people  
5 try to get them current, but...

6 Q. Are you familiar with something known as  
7 a change of control contract?

8 A. The general term, yeah.

9 Q. It's also sometimes referred to as a  
10 golden parachute, correct?

11 A. Sometimes.

12 Q. Do you have one?

13 MR. BURKE: Objection.

14 A. Yes.

15 Q. It calls for three times your annual  
16 salary plus bonus; is that right?

17 A. I don't think it's relevant. I don't  
18 think it could possibly be relevant to what we're  
19 doing here.

20 Q. Does it call for three times your annual  
21 salary?

22 A. Why is that relevant?

23 MR. BURKE: What's the relevance,  
24 Mr. Brautigam? He's told you he has one.

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1 MR. BRAUTIGAM: Can you explain for the  
2 record why you allowed Mr. Hoverson to answer  
3 the question, but Mr. Carey you're directing  
4 not to answer just as you've allowed --

5 MR. BURKE: Because the witness  
6 obviously doesn't want to answer the question.  
7 He feels this is personal financial  
8 information which you know has nothing to do  
9 with the case. Besides, the other thing is I  
10 think it's already publicly disclosed, is it  
11 not?

12 A. Yeah, the information is publicly  
13 available.

14 MR. BURKE: It's out there.

15 A. It's about what you said.

16 MR. BURKE: It's probably in the Nat  
17 City proxy materials.

18 A. It's not precisely what you said, but  
19 it's about that. I didn't think it was that  
20 relevant. Let's move on.

21 Q. Do you intend to stay with National City  
22 after the merger?

23 A. No.

24 Q. What are you going to do?

75 (Pages 294 to 297)



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1 A. I'm going to get another job, not with  
2 Nat City.  
3 Q. Do you have one lined up?  
4 A. Yes, I do.  
5 Q. Will you be leaving the Cincinnati area?  
6 A. Yes, I will.  
7 Q. Do you have any idea what your new  
8 address will be?  
9 A. I'm not disclosing that publicly yet  
10 because it hasn't been announced. Of course I know  
11 what the address is, but it's not been announced  
12 publicly.  
13 Q. Well, I'm entitled to your address --  
14 your new address.  
15 MR. BURKE: No, you're not entitled to  
16 it.  
17 A. We'll get you the address when you need  
18 it, Mike. Come on. I'm not disappearing. All  
19 right?  
20 MR. BRAUTIGAM: Do I have your  
21 representation that you will provide me with  
22 Mr. Carey's new contact information?  
23 MR. BURKE: You have my representation  
24 that if you need to get in touch with

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1 Mr. Carey, contact me, and I will get in touch  
2 with Mr. Carey. I will make sure that I am  
3 able to get in contact with Mr. Carey at your  
4 request.  
5 MR. BRAUTIGAM: Good enough.  
6 A. They'll be able to contact me. That's  
7 not an issue.  
8 Q. Would you turn to page 18 of the proxy  
9 materials.  
10 A. Okay.  
11 Q. Toward the bottom, there's a section  
12 called the acquisition, and the second subheading  
13 is background of the acquisition. Do you see that?  
14 A. Yes, I do.  
15 Q. And I believe we established earlier in  
16 the day that it was your belief that the  
17 shareholders of a public company should be able to  
18 determine who their directors are at any particular  
19 time; is that correct?  
20 MR. BURKE: Objection. Misstates prior  
21 testimony. I don't recall that.  
22 Q. If I misstated that, I didn't mean to.  
23 A. No, I think you got it about right.  
24 Q. I got it about right?

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1 A. Yeah.  
2 Q. Okay. The first sentence of the first  
3 paragraph on the background of the acquisition  
4 refers to the board of directors of OHSL. Do you  
5 see that?  
6 A. Um-hum.  
7 Q. And it refers to a special meeting on  
8 August 2nd, 1999. Do you see that?  
9 A. Yes, I do.  
10 Q. And as of August 2nd, 1999, the OHSL  
11 board had seven directors, correct?  
12 MR. BURKE: Objection. Calls for  
13 speculation.  
14 A. I don't remember how many board members  
15 they have. I think this document said they had  
16 seven.  
17 Q. It's page 57.  
18 A. So I assume it's seven.  
19 Q. Okay. Now, would you turn to page 19.  
20 A. Okay.  
21 Q. Top of the page, first line, gives some  
22 background of OHSL conversion from a mutual company  
23 or a stock company. Do you see that?  
24 A. Um-hum.

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1 Q. And on the first line, continuing onto  
2 the second line, it says the OHSL board of  
3 directors. Do you see that?  
4 A. Since that time, the OHSL board of  
5 directors -- is that what you're saying?  
6 Q. Yes.  
7 A. Yes.  
8 Q. That goes back to 1993, correct?  
9 MR. BURKE: Objection. Calls for  
10 speculation. I mean, you didn't even set up a  
11 foundation for this discussion with this  
12 witness. Obviously, he was not at Provident  
13 in 1993. You know that. Objection;  
14 speculation.  
15 A. I think the sentence is referring -- you  
16 know, since it follows the 1993 -- is referring to  
17 1993 and forward.  
18 Q. And how many directors did OHSL have  
19 from the time it became a public company until July  
20 31st, 1999?  
21 MR. BURKE: Objection. Calls for  
22 speculation.  
23 A. I have no idea.  
24 Q. Let me represent to you that it had

76 (Pages 298 to 301)

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1 eight directors.  
 2 A. Okay.  
 3 Q. Now, do you see the reference to the  
 4 board --  
 5 A. Um-hum.  
 6 Q. -- in the next paragraph?  
 7 A. Yes. The board continued to allocate  
 8 its time.  
 9 Q. Right. And that's talking about  
 10 February of 1999, correct?  
 11 A. Um-hum. Well, there's a specific  
 12 reference to February of 1999.  
 13 Q. Right. And how many directors did the  
 14 reference "the board" refer to?  
 15 MR. BURKE: Objection. Calls for  
 16 speculation.  
 17 A. I don't know. I don't know what -- I  
 18 don't know how many they had then.  
 19 Q. Okay. Well, I represent that they had  
 20 eight.  
 21 A. Okay. Then they had eight. I don't  
 22 know.  
 23 Q. Okay.  
 24 A. They could have had ten at that time for

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1 that's too far of a generalization.  
 2 Q. How many board members does Provident  
 3 have?  
 4 A. Six. The larger companies have the  
 5 bigger boards.  
 6 Q. Do you see the paragraph that begins, At  
 7 a meeting of the OHSL board of directors in April  
 8 1999?  
 9 A. Um-hum.  
 10 Q. How many directors does that refer to?  
 11 MR. BURKE: Objection. Calls for  
 12 speculation; no foundation.  
 13 A. I don't know because it really is  
 14 talking about an ad hoc committee. I don't know.  
 15 It doesn't say.  
 16 Q. Turn the page to page 20. In May 1999,  
 17 the OHSL board of directors met. Do you see that?  
 18 A. Um-hum.  
 19 Q. Is that referring to the full board?  
 20 MR. BURKE: Objection. Calls for  
 21 speculation.  
 22 A. I don't know if all the board members  
 23 were at a particular meeting or what. Who would  
 24 know?

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1 all we know.  
 2 Q. No, that's not true. They had eight.  
 3 A. I know, but that's just because you're  
 4 representing it. I have no idea, Mike. You're  
 5 asking me a question about something I wouldn't  
 6 possibly know the answer to.  
 7 Q. Well, I think we can piece it together.  
 8 On page 57, the OHSL board has seven directors,  
 9 correct?  
 10 MR. BURKE: Objection.  
 11 A. They could have had more or less.  
 12 MR. BURKE: Objection. He has no  
 13 foundation for this. There's no firsthand  
 14 knowledge of any of this.  
 15 A. My experience with boards is that board  
 16 sizes range from 12 to 24 and can change with some  
 17 frequency. At least at the last company I worked,  
 18 there was a lot of change. Over that 13 years I  
 19 was there, our board size went from 12 to 24,  
 20 roughly -- rough numbers. Go look at it. You'll  
 21 see. There was a lot of movement.  
 22 Q. Mr. Carey, you said that your experience  
 23 is that boards have 12 to 24 members, correct?  
 24 A. Yeah. Well, bigger companies. Maybe

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1 Q. If you read the board minutes, you'd  
 2 know, right?  
 3 MR. BURKE: Ask him if he's read the  
 4 board minutes then.  
 5 A. I don't think I read the board minutes.  
 6 Q. Okay. Is it typical for someone on the  
 7 acquiring side to read the board minutes of the  
 8 acquiring company?  
 9 A. Um-hum.  
 10 Q. Yes?  
 11 A. It's typical. I don't know if -- it  
 12 depends. It's typical there will be some review of  
 13 the board minutes.  
 14 Q. Did someone from Provident review OHSL's  
 15 board and committee minutes for, say, the last five  
 16 years?  
 17 A. Probably. I don't know if they would  
 18 have gone back five years, but I would presume that  
 19 there would be some review of the board minutes by  
 20 someone from either Provident or someone  
 21 representing Provident.  
 22 Q. Whom do you believe was given that task?  
 23 A. I don't remember. It could have been  
 24 legal, finance, or outside legal counsel. It would

77 (Pages 302 to 305)

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1 have been one of those three groups.

2 Q. Do you have reason to believe that this  
3 actually took place with respect to this specific  
4 transaction?

5 MR. BURKE: Objection.

6 A. I can't remember. I would -- I can't  
7 remember whether it took place or not.

8 Q. Did you ever see a report about the  
9 board minutes?

10 A. I don't remember five years ago whether  
11 there was a report about it. It would -- usually,  
12 you're looking for issues that might be in a board  
13 -- in minutes. So if there aren't issues, there  
14 wouldn't be much of a report.

15 Q. If there were issues, would there be a  
16 report?

17 MR. BURKE: Objection. Calls for  
18 speculation.

19 A. If they were deemed significant by the  
20 person doing the review.

21 Q. Would dissent by board members be deemed  
22 significant by you?

23 MR. BURKE: Objection. Calls for  
24 speculation.

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1 such an individual situation.

2 Q. In this situation, if there was dissent  
3 and you knew about it in 1999, would it have caused  
4 you to inquire further?

5 MR. BURKE: Objection. Calls for  
6 speculation.

7 A. I don't -- I don't know. I doubt it,  
8 but I don't know.

9 Q. Did you have the ability to pick up the  
10 telephone and call Mr. Hanauer and say, Hey, I've  
11 heard certain things about the merger; I'd like to  
12 know more?

13 MR. BURKE: Objection. Speculation.

14 A. I'm not sure I understand the question,  
15 I've heard certain things about the merger. What  
16 do you mean?

17 Q. In other words --

18 A. During due diligence?

19 Q. Let me give you an example. During the  
20 due diligence phase or even after the merger as you  
21 were trying to fit the pieces together, was it  
22 ethical and proper for you to call Mr. Hanauer with  
23 questions about the merger?

24 MR. BURKE: Objection. Legal

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1 A. It would depend what it related to. I  
2 don't know that in the context of a merger it would  
3 be relevant at all. It wouldn't be the kind of  
4 thing we would be looking for.

5 Q. If directors had voted against the  
6 merger and then switched their votes, is that  
7 something that would be significant to you as the  
8 CFO of the acquiring company?

9 MR. BURKE: Objection. Calls for  
10 speculation.

11 A. That kind of goes back to what we said  
12 earlier.

13 MR. BURKE: Assumes facts not in  
14 evidence. You may answer.

15 (Off-the-record discussion.)

16 MR. BURKE: Objection. Calls for  
17 speculation; assumes facts not in evidence.

18 You may answer.

19 A. I don't know, as I said earlier, if  
20 there was dissent, whether that would be something  
21 that would -- I think you'd have to have more  
22 reason -- you would have to understand the full  
23 depth of the dissent, but I don't know whether that  
24 would cause a concern or not myself. I mean, it's

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1 conclusion. You may answer.

2 A. There was something preventing me, and I  
3 think I had some conversations with Ken; some face-  
4 to-face, some over the phone. I don't remember  
5 specifically, but I'm sure we had some  
6 conversations.

7 Q. If you had known that a director had  
8 resigned in part in protest three days before the  
9 merger agreement was finalized, would you have  
10 asked Mr. Hanauer about it?

11 MR. BURKE: Objection. Speculation.

12 A. Yeah, I don't know, and I suspect that  
13 someone else might have asked that question other  
14 than me perhaps, but I don't know.

15 Q. Mr. Hoverson?

16 A. Perhaps, yeah.

17 Q. If you had known that Mr. Hanauer was  
18 not in favor of the merger despite what the proxy  
19 materials say, would you have inquired further?

20 MR. BURKE: Objection. Calls for  
21 speculation; assumes facts not in evidence.

22 A. I don't know the answer to that. I  
23 would have to see what the circumstances were at  
24 the time. I mean, he voted for it.

78 (Pages 306 to 309)

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1 If I heard that he was not in favor of  
2 it, I suppose I would have talked to him, but it  
3 wouldn't have -- I mean, I don't know how to make a  
4 judgment on what I would have done three or four  
5 years ago or five years ago.

6 Q. What would you have said?

7 MR. BURKE: Objection. Speculation.

8 A. I don't know what I would have said at  
9 the time. I really don't.

10 Q. If you had known that Mr. Hanauer  
11 intended to vote his personal shares against the  
12 merger, would you have discussed this issue with  
13 him?

14 MR. BURKE: Objection. Speculation.

15 A. I don't know whether I would have taken  
16 that up -- that issue or not. If you didn't think  
17 it would affect the overall vote, I suspect I  
18 wouldn't have. It's a personal decision.

19 Q. And your answer is based on the  
20 conclusion that it may not have affected the  
21 overall vote, correct?

22 MR. BURKE: Objection. Speculation.

23 A. My answer is that you get to vote your  
24 shares however you want to vote them.

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1 Mr. Brautigam, he doesn't know anything about  
2 these details.

3 MR. BRAUTIGAM: Okay.

4 MR. BURKE: I mean, if you would ask him  
5 a question if he knows anything about any of  
6 the references we might be able to cut to the  
7 chase.

8 MR. BRAUTIGAM: It's a reasonable  
9 question because it's a joint document. He's  
10 the CFO. Next question.

11 BY MR. BRAUTIGAM:

12 Q. On June 15th, 1999, the board met. Do  
13 you see that?

14 A. Um-hum.

15 Q. Does that refer to the whole board?

16 MR. BURKE: Objection. Calls for  
17 speculation; no foundation.

18 A. I don't know. I don't know whether -- I  
19 can't remember whether the whole board was at these  
20 meetings. I don't certainly know -- I don't even  
21 remember if the whole board was at the meeting that  
22 I was at. I really have no idea whether they were  
23 -- whether they had a hundred percent attendance at  
24 all of their meetings.

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1 Q. Is there a difference in your mind  
2 between issues that would change the outcome of the  
3 vote as opposed to issues that would add to the  
4 total mix of information that a reasonable  
5 shareholder has the right to consider?

6 MR. BURKE: Objection to form;  
7 speculation; legal conclusion; vague.

8 A. I'm not sure. Why don't you repeat  
9 that, Mike.

10 (The question was read back.)

11 MR. BURKE: Same objections.

12 A. There's a difference between those two  
13 concepts, I think.

14 Q. Back on page 20 of the proxy materials,  
15 do you see a reference to, on June 22nd, 1999, the  
16 board?

17 A. Um-hum.

18 Q. And does it refer to the whole board?

19 MR. BURKE: Objection. Calls for  
20 speculation.

21 A. I don't know.

22 MR. BURKE: He's told you time --

23 A. I don't know.

24 MR. BURKE: -- and time again,

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1 Q. Okay. Next reference. On July 22nd,  
2 1999, the board met. Does that refer to the whole  
3 board?

4 MR. BURKE: Objection. Speculation; no  
5 foundation.

6 A. Again, I don't know, unless it would  
7 tell you in here; and it doesn't look like it does.

8 Q. Now let's jump to the chase. This is  
9 what I'm really interested in. The next  
10 reference: From July 22nd, 1999, to August 2nd,  
11 1999, McDonald, the OHSL board, and OHSL's legal  
12 counsel engaged in negotiations with Provident  
13 Financial related to a definitive agreement. Do  
14 you see that?

15 A. Um-hum.

16 Q. Based on the documents that I've shown  
17 you, does it appear to you that the composition of  
18 OHSL's board changed during that period from July  
19 22nd, 1999, to August 2nd, 1999?

20 MR. BURKE: Objection. No foundation;  
21 calls for speculation as to this witness.

22 A. I guess I have to ask a question. I  
23 don't know whether the --

24 MR. BURKE: The question is, you have to

79 (Pages 310 to 313)



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1 answer his question.

2 A. Yeah, I don't know whether the board  
3 changed because I don't know whether this person  
4 that appears to have resigned in that time period  
5 was attending the meetings during any of this time  
6 period.

7 Q. Whether he was attending the meetings or  
8 not, the composition of the board changed, correct?

9 A. That's the question I was going to ask  
10 you. If you're just talking to the board  
11 regardless of whether they attended the meetings or  
12 not, it appears that the board changed and was  
13 reduced in size to one during that time period.

14 Q. And that's not disclosed, correct?

15 MR. BURKE: Objection. Misstates the  
16 document.

17 A. I don't believe it's disclosed.

18 Q. And then on the following page, page 21,  
19 at a meeting on August 2nd, 1999, the OHSL board of  
20 directors unanimously approved the merger agreement  
21 and the acquisition and recommended approval of the  
22 merger agreement and acquisition by the  
23 stockholders of OHSL. Do you see that?

24 A. Um-hum.

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1 they had seven board members at another point at  
2 relevant times in this document? Tell me that.

3 MR. BURKE: Objection. Asked and  
4 answered. You may answer.

5 A. Well, it's hard to say because you could  
6 have your board sizes broken down at interim  
7 periods, but I presume they could look at the  
8 annual report and see that presumably they had  
9 eight at their annual report, and then they came  
10 here and saw there were seven. So they'd know  
11 there were less -- one less.

12 Q. In this document --

13 MR. BURKE: The witness has answered.

14 A. All those documents are incorporated by  
15 reference to this thing.

16 Q. Okay. Tell me how a shareholder would  
17 know that the composition of OHSL's board had  
18 changed and when it had changed from the four  
19 corners of Defendants' Exhibit 1.

20 MR. BURKE: Objection. Asked and  
21 answered.

22 A. I told you. How they would do it is  
23 look at the other documents that are incorporated  
24 by reference here and see that it had changed.

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1 Q. And there's no indication in that  
2 sentence or anywhere else in the document that the  
3 composition of the OHSL board had changed between  
4 July 30th, 1999, and August 2nd, 1999, correct?

5 MR. BURKE: Objection. Calls for  
6 speculation, particularly as to the rest of  
7 this document.

8 A. Well, yeah, I guess I have no idea  
9 whether this whole document talks about that change  
10 in there anywhere. This particular section doesn't  
11 talk about it.

12 Q. What do you mean you have no idea  
13 whether this whole document --

14 A. Well, I don't -- you know, it's five  
15 years ago. I don't remember what was in the  
16 document. I don't believe it was in there, but...

17 Q. Okay.

18 A. The document I think in here indicates  
19 that there are seven board members, and I guess at  
20 one time there were eight. So people will be able  
21 to see they had less board members if they were  
22 looking at that if it was important.

23 Q. Okay. How would they be able to tell if  
24 they had eight board members at one point and then

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1 That's how they'd do it.

2 Q. But you couldn't do it if you only had  
3 Defendants' Exhibit 1 in front of you, correct?

4 A. I don't know if you could do everything  
5 you wanted to do by just this document either on a  
6 whole list of other fronts. I don't know. To be  
7 honest with you, I don't know if there's something  
8 else in here that shows at one point in time there  
9 were eight and now there were seven.

10 Q. Okay. You're familiar with the concept  
11 that public documents shall not contain any untrue  
12 statement of a material fact or omit to state any  
13 material fact necessary in order to make the  
14 statements made therein in light of the  
15 circumstances under which they are made not  
16 misleading? You're familiar with that concept,  
17 correct?

18 MR. BURKE: Objection. Calls for legal  
19 conclusion. I don't know what you're  
20 referring to, but answer.

21 A. You know, I've obviously read and am  
22 familiar with that general concept.

23 Q. Okay. If you would like to look at it,  
24 it's page A-22 of the merger agreement which you

80 (Pages 314 to 317)

Page 318

1 read and signed.

2 Now, do you believe that the discussion  
3 of the OHSL board, particularly with respect to the  
4 period between July 22nd and August 2nd, 1999,  
5 contains an untrue statement of a material fact or  
6 omits to state any necessary material facts  
7 necessary in order to make the statements made  
8 therein in light of the circumstances under which  
9 they are made not misleading?

10 MR. BURKE: Objection. Calls for legal  
11 conclusion. You may answer.

12 A. I would defer to legal counsel there,  
13 but I guess I have to tell you I don't think that  
14 there was any material information omitted there  
15 anyway, but I would still defer to having legal  
16 counsel say whether they agreed with that or not,  
17 but my own opinion is there wasn't.

18 Q. Do you believe that what we've been  
19 talking about with respect to Mr. Herron's  
20 resignation, without respect to whether it's  
21 material or not, is misleading?

22 MR. BURKE: Objection. Asked and  
23 answered. You may answer.

24 Q. Are you saying that because it was not

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1 investors at all, by the way.

2 But I would defer to legal counsel as to  
3 whether they thought it should be disclosed, but I  
4 don't think it would -- I'd give you the same  
5 answer. I don't think if one of our directors  
6 resigned, that our shareholder base would -- not  
7 knowing that would feel they were misled.

8 Q. And that's true if a director of  
9 Provident resigned in part in protest --

10 MR. BURKE: Objection.

11 Q. -- just days before the merger was  
12 finalized?

13 MR. BURKE: Calls for speculation; asked  
14 and answered.

15 A. I've answered the question, Mike. Yeah,  
16 I don't think that that's -- here's what I've said:  
17 My own opinion, I would defer to legal counsel; but  
18 I don't think that if a director resigned -- I  
19 mean, there's other facts and circumstances around  
20 it. Everybody voted for the merger. This person  
21 resigned. I don't think that in itself would be  
22 one that I think you'd have to disclose in there in  
23 our document.

24 Q. Do you think in terms of good corporate

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1 stated in there that he resigned, that that's  
2 misleading? Is that the question?

3 MR. BURKE: I think so.

4 Q. I'm talking about the concept, which  
5 includes more than that. In light of the  
6 circumstances under which these statements are  
7 made.

8 MR. BURKE: Objection to form.

9 A. I don't personally think that that is a  
10 material misstatement of fact. I would go to legal  
11 counsel for guidance, but my own opinion is the  
12 fact that this own individual resigned -- no, no,  
13 it doesn't trouble me.

14 Q. If one of the Provident directors  
15 resigned in part in protest of the National City  
16 merger days before the merger agreement is  
17 finalized and signed, would you have insisted that  
18 that information be disclosed to Provident  
19 shareholders?

20 MR. BURKE: Objection. Calls for legal  
21 conclusion.

22 A. I think, you know, again, we're really  
23 getting into the speculating, but I don't think it  
24 would be material information to any of our

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1 governance, it should be disclosed whether --

2 A. I'm not going to comment on good  
3 corporate governance here.

4 Q. Why not?

5 MR. BURKE: Objection.

6 Q. Mr. Carey, once again, you've confused  
7 this with a press conference.

8 A. I'll just tell you I would defer to  
9 legal counsel to determine if they thought that was  
10 good corporate governance or not.

11 Q. Do you think it's fair --

12 A. I'm not sure it's a corporate governance  
13 issue, by the way. It's a disclosure issue.

14 Q. Okay. You testified previously that you  
15 consider yourself a fair man. Putting material  
16 aside, putting requirements aside, do you believe  
17 it was fair to the OHSL shareholders not to tell  
18 them that one of their eight directors had resigned  
19 in part in protest days before the merger?

20 MR. BURKE: Objection. Speculation;  
21 assumes facts not in evidence; misstates the  
22 record; calls for speculation; and legal  
23 conclusion. You may answer.

24 A. Again, I would defer to what our legal

81 (Pages 318 to 321)

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1 counsel would advise us to do there, but I did  
2 state already a couple times that I didn't think it  
3 was information that needed to be included in  
4 there.

5 (Off-the-record interruption.)

6 BY MR. BRAUTIGAM:

7 Q. Would you turn to page A-2 of the proxy  
8 materials, please. We've previously talked about  
9 material adverse effect, right?

10 A. Um-hum.

11 Q. And you believe that the \$25,000 number  
12 is just a mistake, right?

13 A. Yeah, it looks like a mistake to me. It  
14 looks too small.

15 Q. Would you turn to page A-19, and I'd  
16 like to direct your attention to section 2.27,  
17 statements true and correct. Do you see that?

18 A. Um-hum.

19 Q. Could you just read that to yourself for  
20 a moment?

21 A. Okay.

22 Q. What does this mean to you as the CFO of  
23 Provident, as the person who signed this document?

24 MR. BURKE: What does what?

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1 conversation.

2 Q. Are you troubled by anything you may  
3 have learned today about the behavior of  
4 Mr. Hanauer?

5 A. No, I'm not. I'm not troubled by  
6 anything I learned today about the behavior of  
7 Mr. Hanauer.

8 Q. Are you troubled about anything you  
9 learned about the behavior of Mr. Hanauer after the  
10 merger?

11 A. Troubled isn't the word that I would  
12 use.

13 Q. What word would you use?

14 A. I'd like to think of the right word,  
15 but... curious, maybe; mildly surprised, perhaps.  
16 You know, he didn't vote his shares, and I thought  
17 that was unusual.

18 But I've seen senior executives at large  
19 companies that get bought out that don't vote their  
20 shares for a variety of reasons that had a lot more  
21 stock than he had, I think. Well, maybe not more  
22 than him, but probably a lot. People do different  
23 things, but surprised, not shocked.

24 Q. Do you know Mr. Hanauer ran the October

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1 MR. BRAUTIGAM: Section 2.27.

2 MR. BURKE: Objection.

3 A. You're trying to --

4 MR. BURKE: Objection. Calls for legal  
5 conclusion. I think you've got to see what  
6 this is talking about. So go ahead. You can  
7 answer if you can.

8 A. I mean, in general, the information that  
9 is being supplied is correct.

10 Q. Okay. And Provident was relying on that  
11 information, correct?

12 A. Um-hum. We did our due diligence, but  
13 we were relying on it also, partly.

14 Q. And based on things that we've discussed  
15 today, do you believe that any information that Oak  
16 Hills provided to Provident was inaccurate?

17 A. I'm sorry. Based on what? Based on...

18 Q. ...our discussion here today and the  
19 documents I've shown you.

20 MR. BURKE: Objection. You may answer.

21 A. Based on the discussions we've had  
22 today, do I think any of the information that Oak  
23 Hills provided us was inaccurate? I don't know  
24 that I'm aware of anything out of today's

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1 25th, 1999, OHSL special meeting that was roughly  
2 comparable to the May 20th, 2004, meeting that  
3 Mr. Hoverson ran?

4 MR. BURKE: Objection. Calls for  
5 speculation as to that; no foundation for it;  
6 also disagree with the comparison to the two,  
7 but you may answer.

8 A. I don't recall that he ran the special  
9 meeting. I assume he did because he's the CEO, but  
10 I didn't know whether he or one of the board  
11 members ran it; but if you tell me he ran it, I'll  
12 accept that.

13 Q. Okay. He did run it.

14 A. Okay.

15 Q. Do you believe that it was fair -- as  
16 we've previously discussed what that word means --  
17 that Mr. Hanauer got up in front of the OHSL  
18 shareholders and said, in substance, vote in favor  
19 of this merger, knowing that he had voted 123,075  
20 shares, 4.9 percent of the company, against the  
21 merger?

22 MR. BURKE: Objection. Calls for  
23 speculation; no foundation for this witness;  
24 and also mischaracterizes the record.

82 (Pages 322 to 325)

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1 A. Yeah, I can't really interpret why he  
2 said what he said when he voted for it but didn't  
3 vote his shares for it. I don't know what to think  
4 of that.

5 Q. I'm not asking you to interpret why.  
6 I'm asking you if you think it was fair. It's a  
7 simple question.

8 MR. BURKE: Objection. Calls for  
9 speculation. He wasn't there.

10 A. I think everybody should get to vote  
11 their shares however they chose. So he voted his  
12 shares the way he decided to vote them. I don't  
13 really fully understand why, but...

14 Q. If Joe Blow votes a hundred shares in  
15 favor of or against the merger, who cares, right?

16 MR. BURKE: Objection. What does that  
17 mean? Objection to form. Who's Joe Blow?

18 Q. Do you understand my question,  
19 Mr. Carey?

20 A. I mean, the specific question on Joe  
21 Blow?

22 Q. Yes.

23 MR. BURKE: Objection.

24 A. I think I would say that if someone

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1 we've asked --

2 A. I don't --

3 MR. BURKE: This has been asked and  
4 answered a dozen times.

5 A. I don't know how a board member or CEO  
6 votes their shares is material information. I  
7 don't know that. I would defer that to legal  
8 counsel.

9 It's not something I have a lot of  
10 experience with, this entire issue that this person  
11 voted their shares differently than the way they  
12 voted for the deal.

13 Q. Can you just read section 3.5, financial  
14 information, on page A-20 of the proxy materials to  
15 yourself.

16 A. (Examining document.) Okay. I got the  
17 general gist of it.

18 Q. And if I'm still looking at this  
19 correctly, I think that's one long sentence; is  
20 that right?

21 MR. BURKE: What is one long sentence?

22 A. Could be.

23 MR. BURKE: Section 35?

24 MR. BRAUTIGAM: Section 35.

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1 votes a hundred shares in most of these  
2 transactions, nobody would really care about which  
3 way they voted.

4 Q. Right, and that's true if there's no  
5 affiliation with the company. You're a  
6 shareholder, you own a hundred shares, no --

7 A. Well, the size of the shares is probably  
8 the bigger factor; but I'm not sure that people  
9 care whether you vote 100 or 123,000. I mean, I'm  
10 not.

11 Q. And we've already discussed  
12 Ms. Preston's conclusions; some of which you agree  
13 with and some of which you disagree with, correct?

14 MR. BURKE: Objection.

15 Q. She was our expert.

16 MR. BURKE: Objection.

17 A. I don't know whether -- how much I  
18 really agreed with her. I certainly disagreed with  
19 the Hewlett Packard comparison that she made.  
20 That, I remember not agreeing with.

21 Q. Do you believe that how a board member  
22 and how the CEO of a company intends to vote his  
23 shares is potentially material information?

24 MR. BURKE: Objection. I mean, I know

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1 A. Might be the longest sentence in here.  
2 Let's see. It looks like it could be.

3 Q. And that sentence is not true, correct?

4 MR. BURKE: Objection.

5 A. I don't know that the entire sentence  
6 isn't true.

7 Q. Well, let's go through this, and tell me  
8 what parts of the sentence are true and what parts  
9 are not true.

10 A. Well, as you know, we had a restatement  
11 that impacted the income we reported, and the 1999  
12 amount -- I forget what it was here, but --

13 Q. 11.3 million.

14 A. Yeah, it was probably -- it was close to  
15 being material. The other years looked like they  
16 weren't. But these statements also refer to cash  
17 flows, which weren't affected. They refer to the  
18 balance sheet which would have been not material.

19 They refer to a host of other things  
20 that -- you know, a big portion of what's in here  
21 -- actually, this only relates to '98 in the first  
22 six months.

23 So I'm really not sure that in the  
24 context of what they're saying here, it's not



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1 materially in compliance when I think about it  
2 because you don't have the full year '99 where  
3 there's the biggest impact.

4 Q. Well, the part of the sentence that  
5 starts at the very bottom of page A-20, Have been  
6 prepared in accordance with generally-accepted  
7 accounting principles applied on a consistent  
8 basis -- and I'm skipping some stuff -- and fairly  
9 present in all material respects the consolidated  
10 financial position and the consolidated results of  
11 operations charges in shareholder equity --

12 MR. BURKE: Changes.

13 Q. -- changes in shareholder equity and  
14 cash flows of PFGI and its consolidated  
15 subsidiaries as of the dates and for the periods  
16 indicated -- that's incorrect, right?

17 MR. BURKE: You might want to complete  
18 the sentence just so the record is clear.

19 Q. In parenthesis, subject in the case of  
20 interim financial statements to normal recurring  
21 year-end adjustments, none of which would be  
22 material?

23 A. Well, I wouldn't say that that was all  
24 incorrect. I would say that it's possible that

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1 part of it is incorrect; but again, if you --  
2 they're talking about our financial statements, and  
3 you know, it's a question. It's likely that the  
4 financial position -- let's start with the cash  
5 flow since these adjustments typically didn't  
6 affect the cash flows.

7 The financial position would have been  
8 material -- probably materially correct. The  
9 income statement would have probably been the  
10 biggest question.

11 And for the prior years, I don't think  
12 those numbers were particularly material looking,  
13 and we don't have the full year '99 statements in  
14 here.

15 So I mean, it's -- I'm not really sure,  
16 to tell you the truth. You know we had a  
17 restatement. You've got the numbers yourself, and  
18 you see how they play out; but it's not a -- it's  
19 not certain as to what that would be.

20 Q. Is it fair to say that Provident's  
21 financial statements were not prepared in  
22 accordance with GAAP from 2002 to 1994?

23 A. No, I don't think that's -- that's  
24 probably not fair to say.

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1 Q. Why not?

2 A. Because I think the earlier years were  
3 clearly the material standpoint, and you're always  
4 -- GAAP -- it has to be material. It has to be --  
5 if you have immaterial differences, you can still  
6 be in compliance with GAAP.

7 So if it was immaterial in any of those  
8 periods, those years would have been considered in  
9 accordance with GAAP.

10 Q. Do you see section 3.7?

11 A. Um-hum, yes.

12 Q. That talks about the pendency of an  
13 injunction, judgment, order, decree, or regulatory  
14 restriction as a material adverse effect on PFGI,  
15 correct?

16 A. Correct.

17 Q. And later down, section 3.9, there's a  
18 reference to all material reports and statements.  
19 Do you see that?

20 A. Um-hum, yes.

21 Q. How are material reports defined?

22 A. I don't know if it's defined in here.

23 Q. What is your understanding of material  
24 reports as it's used on that page?

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1 MR. BURKE: Objection. Foundation.

2 A. Where does it say it again? Where does  
3 it say the word materially?

4 Q. On the top line.

5 A. I would say material reports would  
6 primarily be the SEC and the call reports.  
7 (Off-the-record interruption.)

8 BY MR. BRAUTIGAM:

9 Q. Would you turn to page A-22 and read  
10 section 3.14 to yourself, please.

11 A. Okay.

12 Q. That section has two long sentences,  
13 correct?

14 A. Right.

15 Q. And the concept that's embraced in the  
16 first sentence is true for the filing of all public  
17 documents, correct?

18 MR. BURKE: Objection to form. I didn't  
19 understand that question.

20 A. Yeah, I mean, I think that's true. I  
21 mean, it's saying that the filings should not  
22 contain any untrue statement of a material fact or  
23 omit, you know, etc., etc.

24 Q. Right, and it also refers to in light of

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1 the circumstances of which statements are made not  
2 be misleading, correct?

3 A. Yes.

4 Q. And despite what we've talked about  
5 today with the composition of the board,  
6 Mr. Hanauer's views, you don't think anything is  
7 misleading in light of the circumstances under  
8 which they are made that we've discussed so far,  
9 correct?

10 MR. BURKE: Counsel, this has nothing to  
11 do with OHSL. This is a rep and a warranty of  
12 Provident's.

13 MR. BRAUTIGAM: I understand.

14 MR. BURKE: And the proxy statement  
15 didn't exist at this point.

16 MR. BRAUTIGAM: I understand, but he  
17 said that this is generally the standards for  
18 all public documents.

19 MR. BURKE: What is?

20 MR. BRAUTIGAM: This concept.

21 MR. BURKE: I don't understand why we're  
22 talking about a rep and a warranty dated  
23 August 2nd when the proxy statement didn't  
24 come into existence for more than a month

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1 at whether there are any other comparable  
2 situations that might exist.

3 So it's hard for me to conclude on that.  
4 I don't have a lot of experience in either of those  
5 circumstances. They're both a little bit unusual.

6 Q. And for reasons you've already stated,  
7 you don't believe the HP merger is comparable,  
8 correct?

9 A. Right. I do not believe that is  
10 comparable.

11 Q. And when you use --

12 A. I do not believe HP disclosed that. I  
13 think Hewlett disclosed on his own, went out to  
14 everybody. They didn't voluntarily disclose that.  
15 He went out on his own and protested the whole  
16 thing.

17 What's so comparable about somebody  
18 doing that that owns 15 -- that controls 15 percent  
19 of the stock.

20 Q. And you don't believe Mr. Hewlett's  
21 resignation and active opposition was disclosed --

22 A. Yeah, he put a press release out. He  
23 put a press release out.

24 Q. No, I'm not talking about Hewlett's

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1 after this.

2 MR. BRAUTIGAM: Got it. It's part of  
3 the proxy statement.

4 MR. BURKE: This is the merger agreement  
5 at the time it was signed. It was signed on  
6 August the 2nd.

7 MR. BRAUTIGAM: It's attached to the  
8 proxy material. It's part of it.

9 MR. BURKE: But it predates it.

10 MR. BRAUTIGAM: I understand.

11 MR. BURKE: And it's not referring to  
12 the proxy statement because it didn't exist at  
13 that time. That's why the question is  
14 misleading.

15 A. Understanding all that, I tried to say  
16 regarding Ken's activities -- and is it Tim Herron  
17 or somebody?

18 Q. Tom Herron.

19 A. Tom Herron -- that I am unable to  
20 determine at this juncture whether that is  
21 information that should have been disclosed,  
22 although intuitively, I don't think that it would  
23 be required disclosure, but I would defer to legal  
24 counsel for their advice and would prefer to look

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1 press release. I'm talking about in Hewlett  
2 Packard's public documents; in other words, Carly  
3 put a press release out.

4 MR. BURKE: Objection. Speculation.

5 A. There's a lot of speculation there,  
6 Mike. I don't think the situations are very  
7 analogous to ours. They're widely different.

8 Q. Now, in one of your previous answers,  
9 you said intuitively everything we've discussed  
10 today strikes you as information that really  
11 doesn't need to be disclosed, and I just want to  
12 know why?

13 MR. BURKE: Objection. Asked and  
14 answered.

15 A. Well, I kind of said, Mike, that there  
16 are unusual circumstances, and I'm not certain, so  
17 I would rely on legal counsel's advice, SEC  
18 counsel.

19 I'm really not sure I'm qualified to  
20 determine a disclosure issue like that. It's a  
21 little bit unusual, but you had the board voting  
22 for it, and one of the members decided not to vote  
23 his shares.

24 You wouldn't even know that he wasn't

85 (Pages 334 to 337)

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1 going to vote his shares. How would you disclose  
2 that? I understand he was not disclosing to  
3 everybody that he wasn't voting his shares, so how  
4 would we disclose that?

5 Q. Mr. Carey, you refer to not voting his  
6 shares, and you've repeatedly referred to that. In  
7 fact, that's not what happened, correct?

8 A. I don't know.

9 Q. Mr. Hanauer did vote his shares. He  
10 just voted them against the merger.

11 A. I'm sorry.

12 Q. That's what I meant.

13 A. I mean, did he disclose to people that  
14 he wasn't going to vote them so that someone could  
15 put that in a document? I don't know.

16 Q. Who would he disclose it to?

17 A. He's got legal counsel. He could have  
18 called them up and said, Hey, I think I might not  
19 vote my shares. Should this be a disclosure item  
20 or not. I don't know if he did that or not.

21 Q. Do you think he should have?

22 MR. BURKE: Objection. Calls for  
23 speculation.

24 A. I told you I don't know. I don't know,

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1 intended to vote your shares against the Provident-  
2 National City merger, what would you do.

3 And he said, in substance, I would go to  
4 Mr. Hoverson and say, I don't believe in this  
5 transaction, because Mr. Hoverson is the CEO. Are  
6 you with me so far?

7 MR. BURKE: Objection. Calls for  
8 speculation; assumes facts not in evidence;  
9 and mischaracterizes prior testimony about  
10 which this witness knows nothing.

11 Q. You understand the hypothetical I'm  
12 setting up?

13 A. Yes. Yes, I do.

14 Q. Now, with respect to Mr. Hanauer,  
15 because he was a board member and he was also the  
16 CEO, he didn't have to go to himself and tell him  
17 that he was against the merger because he already  
18 knew that.

19 MR. BURKE: Objection.

20 Q. So my point is, do you agree that  
21 Mr. Hanauer's knowledge of his opposition to the  
22 merger is imputed to the corporation?

23 MR. BURKE: Oh, my god. Objection. I  
24 have no idea what that means.

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1 but I don't even know whether he did -- let's put  
2 it this way. If he didn't disclose that he wasn't  
3 going to vote his shares --

4 Q. If he did not?

5 A. If he did not, how would anyone know to  
6 put it in here anyway? That's sort of like -- you  
7 know, first, I'm not sure it should be in there;  
8 but if we didn't know about it, we couldn't have  
9 put it in there anyway.

10 Q. I asked Mr. Hoverson similar questions  
11 about this as to if he intended to vote his shares  
12 against the merger with National City, what would  
13 he do.

14 Mr. Hanauer, as the CEO of OHSL, already  
15 knew that he was going to vote his shares against  
16 the transaction. In other words, there's no one to  
17 tell, because he's the CEO, right?

18 MR. BURKE: Objection. What are you  
19 talking about?

20 A. I don't know. I don't know.

21 MR. BURKE: Calls for speculation.

22 Q. Actually, I misrepresented something. I  
23 was talking to one of the other directors, I think  
24 it was Mr. Cook. And I said, Mr. Cook, if you

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1 A. That's a legal question. I wouldn't try  
2 to guess what the answer is, but I would let the  
3 legal people try.

4 Q. Mr. Carey, we talked about material  
5 adverse effect being set at \$25,000 and your belief  
6 it's a mistake, correct?

7 A. (Witness nods head.)

8 Q. Would you please turn to page A-24 and  
9 look at small xvii.

10 A. Um-hum, yes.

11 Q. What is going on with respect to that  
12 section?

13 A. Well, let me start it a little earlier  
14 to see what they're trying to do here. (Examining  
15 document.)

16 Well, this section is things that Oak  
17 Hills agrees that they will do in the ordinary  
18 course of business.

19 So it looks like to me if they were  
20 going to make capital expenditure above \$25,000,  
21 they would probably talk to us about it before they  
22 did it. We'd probably say okay, but...

23 Q. Does that number strike you as being  
24 ridiculously low?

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1 A. It seems a little low, but for their  
2 size company, it might not be terribly bad. It's  
3 not quite as different as the other thing, but...  
4 Q. Does that number seem consistent with a  
5 material adverse effect as it's defined on page  
6 A-2?

7 MR. BURKE: Objection. Calls for legal  
8 conclusion; speculation.

9 A. I don't really know the answer to that.  
10 I mean, I think this number seems a little low, but  
11 they're dealing with different issues.

12 Q. Okay. Would you turn the page and read  
13 section 4.3 to yourself, submission to management  
14 and shareholders.

15 A. Okay.

16 Q. In subheading A, what does it mean where  
17 it says, Subject only to the fiduciary obligations,  
18 the board of directors?

19 MR. BURKE: Objection. Calls for legal  
20 conclusion. You may answer.

21 A. I'm not a hundred percent sure. I would  
22 really rather defer to legal counsel on what that  
23 means. I could speculate or guess on it, but I'm  
24 not -- it's kind of a legal term, isn't it; not a

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1 A. What page are you on?

2 Q. Back to A-25 -- subject only to the  
3 fiduciary obligations of the board of directors?

4 MR. BURKE: Same objection.

5 A. I would say that I think it's self-  
6 explanatory. Recommend that shareholders vote for  
7 the approval subject to the fiduciary obligations  
8 of the board of directors. That's what it means.

9 Q. Can you give us a better definition of  
10 the --

11 A. I don't know if I can improve upon that  
12 definition. One does not come to mind.

13 Q. Does that mean that you really don't  
14 understand what it means except to read the words  
15 back?

16 MR. BURKE: No. I think it means just  
17 what he said.

18 A. I didn't say that.

19 Q. Okay. Remember --

20 A. You asked me if I could give a better  
21 definition of that; and I said, no, one didn't come  
22 to mind.

23 Q. Well, I actually have a dictionary here  
24 if you would like to refer to that.

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1 financial term?

2 Q. Mr. Carey, would you turn to page A-40.

3 A. Okay.

4 Q. The "S" slashes there represent your  
5 signature, correct?

6 A. Yes, that is my signature.

7 Q. It doesn't represent legal counsel's  
8 signature, correct?

9 A. Right.

10 MR. BURKE: We'll stipulate to that.

11 Q. Was it necessary for you personally as  
12 CFO to have an understanding, a working knowledge,  
13 of the provisions of this document that you signed  
14 on behalf of Provident?

15 MR. BURKE: Independent of legal  
16 counsel?

17 MR. BRAUTIGAM: Not independent; just  
18 for him to have one.

19 A. A working knowledge of the document?  
20 Yeah.

21 Q. Yes?

22 A. Yes.

23 Q. Now, tell me what your understanding --  
24 not legal counsel's understanding --

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1 A. That's okay.

2 Q. Remember you had this situation this  
3 morning when I asked what material was, and you  
4 said it means material; and I asked what  
5 significant meant, and you said it means  
6 significant? Remember that?

7 A. It wasn't exactly like that. I remember  
8 that we were mincing words this morning, though, so  
9 it's somewhat like that.

10 Q. Have we come full circle?

11 MR. BURKE: Objection to form. I don't  
12 know what the relevance of that question is.

13 Q. In other words, you're not going to say  
14 what this means except it means what it says,  
15 right?

16 MR. BURKE: Objection. Asked and  
17 answered. He already told you what he can  
18 answer, Mike. Don't characterize --

19 A. Mike, is it you want me to give you a  
20 further definition of the word fiduciary?

21 Q. I want your understanding --

22 A. Is that what you're looking for?

23 Q. -- of those words.

24 A. The words subject only to the fiduciary



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1 obligations of the board?

2 Q. Yes.

3 MR. BURKE: Asked and answered.

4 A. I mean, I'll give you somehow -- I don't  
5 know if this will do, but they have to carry out --  
6 they want to recommend the shareholders vote for  
7 this subject to any fiduciary obligations that they  
8 may feel would, I guess, prevent them from making  
9 that recommendation.

10 Q. Right. And if Mr. Hanauer did not  
11 believe that the merger between OHSL and Provident  
12 was in the best interest of OHSL shareholders, is  
13 it your understanding that he would have a  
14 fiduciary obligation to vote that way?

15 MR. BURKE: Objection. Speculation;  
16 calls for legal conclusion; assumes facts not  
17 in evidence in which this witness has no  
18 foundation for.

19 A. I'm very confused by the end of the  
20 question, so you might have to repeat it. You said  
21 you have me involved in that. I didn't vote on it.  
22 Maybe I just misheard it.

23 Q. Okay. Let me read it slowly. And if  
24 Mr. Hanauer did not believe that the merger between

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1 MR. BURKE: His shares or his --

2 A. He voted. Forget the shares. He voted  
3 in the special board meeting for the merger. So to  
4 me, that's the only evidential data I have.

5 Whatever he may -- he may have changed  
6 his mind later. He may have done this or that.  
7 And I know there's documents here, and you've  
8 talked to him and all that.

9 I'm just saying when he went to vote for  
10 the merger, he voted for it. And I do agree that  
11 if he didn't think the merger was in the best  
12 interest of the shareholders, then I think he  
13 shouldn't have voted that way, but apparently at  
14 the time he did.

15 Q. I was almost ready to move on, and you  
16 tack on "but apparently at the time, he did."

17 A. Okay. Strike that.

18 MR. BURKE: No, no, no, no. You can't  
19 strike that.

20 A. It appeared that he did.

21 Q. What appeared that he did?

22 MR. BURKE: Objection. Wait for a  
23 question, please.

24 Q. What did you mean when you said it

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1 OHSL and Provident was in the best interest of OHSL  
2 shareholders, is it your understanding that he  
3 would have a fiduciary obligation to vote against  
4 the merger?

5 MR. BURKE: Objection. Calls for  
6 speculation; no foundation; legal conclusion.  
7 In what capacity?

8 MR. BRAUTIGAM: As a director.

9 A. Now, we'll go back. I answered that  
10 question this morning. I'll just tell you that. I  
11 answered that question this morning. You asked it  
12 this morning.

13 Q. Can you answer it this afternoon?

14 A. Yeah. I think that you have to vote the  
15 way you think in performing your fiduciary  
16 responsibilities.

17 So if Mr. Hanover[sic], when he voted  
18 for the merger, didn't think it was in the best  
19 interest of the shareholders, then he should have  
20 not voted that way. Apparently, when he voted, he  
21 did.

22 Q. Why do you say that?

23 A. Because he voted his shares, which to me  
24 is the only --

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1 appeared that he did?

2 A. I'll just wait for you to ask me a  
3 question.

4 Q. Plaintiffs' Exhibit 45, page 34,  
5 paragraph 55, Q and A.

6 A. Plaintiffs' Exhibit...

7 Q. The consolidated amended complaint.

8 A. Page 45?

9 Q. Page 34, Q and A on that page. By the  
10 way, do you know how Mr. Hanauer voted at the July  
11 22nd, 1999, meeting?

12 A. I don't know, but this would imply that  
13 he abstained; is that correct?

14 MR. BURKE: Objection.

15 Q. Right. That is correct.

16 MR. BURKE: Don't speculate, please.

17 A. I don't factually know. There's a Q and  
18 A here that suggests something, but I don't know.

19 Q. And you were right. You drew the right  
20 conclusion. Does Mr. Hanauer's answer, as it  
21 appears on page 34 of the consolidated amended  
22 complaint, suggest that he believed that the merger  
23 transaction was in the best interest of OHSL  
24 shareholders?

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1 MR. BURKE: Objection. Calls for  
2 speculation.

3 A. Yeah, I really cannot interpret. I see  
4 what's written here; and frankly, I don't -- when I  
5 read the whole thing in full, I think it's  
6 impossible for me to interpret what he was thinking  
7 or why he did what he did. I've read the words  
8 here.

9 Q. Doesn't he say he just gave up?

10 MR. BURKE: Objection. Calls for  
11 speculation.

12 A. I'm not really sure what he really means  
13 by, I just gave up.

14 MR. BURKE: Mr. Brautigam, we have gone  
15 over this now for hours.

16 MR. BRAUTIGAM: He keeps tacking  
17 something on.

18 MR. BURKE: No, he doesn't. He's  
19 answered the same way all the way through. So  
20 this is about the last time we're going to ask  
21 these same questions.

22 BY MR. BRAUTIGAM:

23 Q. Mr. Carey, can you keep that document  
24 open, and can you look at the first page of 106

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1 in fact, oppose the merger?

2 MR. BURKE: Objection. Calls for  
3 speculation. There's no time frame. Assumes  
4 facts not in evidence; mischaracterizes the  
5 record.

6 A. I really -- I mean, I really don't think  
7 I can put it all together and draw some conclusion  
8 about what Ken is thinking or doing or why he did  
9 this.

10 MR. BURKE: Asked and answered finally.  
11 Thank you.

12 Q. Okay. A-28, section 5.1, section E.

13 A. Which document is that?

14 Q. The big one, the proxy materials.

15 A. A-28?

16 Q. A-28, yes.

17 A. Okay.

18 Q. Would you read section E to yourself,  
19 please.

20 A. Section E, did you say?

21 Q. E, echo.

22 A. (Examining document.) Okay.

23 Q. If Provident had known about the  
24 accounting errors that it learned about in 2003 in

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1 sitting on the table somewhere?

2 A. Here's 106.

3 Q. Okay. Now, those two documents  
4 together, the first page of 106 and the Q and A on  
5 page 34 of Plaintiffs' 45 --

6 MR. BURKE: That are 700 pages apart in  
7 the deposition transcript, correct?

8 MR. BRAUTIGAM: Whatever it is.

9 MR. BURKE: One is 726 and one is 24, or  
10 724 and 26, just so we're clear.

11 Q. Particularly, the last Q and A -- and  
12 I'll read that. Question -- And you did not  
13 believe the second part of that sentence.

14 Specifically, you did not believe that -- and then  
15 there's an insertion, the merger -- is in the best  
16 interest of Oak Hills stockholders, correct?

17 And Mr. Hanauer answers, That was my  
18 opinion, yes, sir.

19 Does that, in conjunction with the Q and  
20 A on page 34 and in conjunction with Plaintiffs'  
21 Exhibit 1 where there's a statement attributed to  
22 Mr. Burke that Mr. Hanauer opposed the Provident  
23 takeover because he wanted Oak Hills to remain  
24 independent, suggest to you that Mr. Hanauer did,

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1 1999, would they have been considered material  
2 adverse effects?

3 MR. BURKE: Objection. Calls for  
4 speculation; assumes facts not in evidence.

5 A. I would just answer that the way I  
6 answered before. I don't know that they would or  
7 would not have.

8 Q. Would Provident have notified Oak Hills  
9 that there was this accounting error?

10 MR. BURKE: Same objection.

11 A. I think if we became aware of it, then  
12 we would have probably notified them. I mean,  
13 that's hard to speculate.

14 If we knew about it, then -- I mean,  
15 again, if you knew about it then, it would -- the  
16 overall magnitude of the whole thing would have  
17 been significantly less. I'm not sure. I'd have  
18 to have some data to look at there.

19 Q. If you knew about the accounting errors  
20 in August of 1999, would you have notified the SEC?

21 MR. BURKE: Objection. Calls for  
22 speculation.

23 A. I would have to see the data at the  
24 time, really.

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